No, he didn't. I think he probably continued on about as far as I know, and it might have been up until the time he died.

Q. Were you and your brother partners all that time? A. No, we were partners, in a partnership association, probably up until a year or two after I severed my connection with Industrial; maybe one year, maybe two years.

Q. Did you or your brother, or either or both of you, have any official positions with the State of Oregon in connection with the medical practice? A. Yes, my brother was a member of the State Board of Medical Examiners for pretty close to twenty years. He had been a member of the State Board of Medical Examiners for ten years preceding, and one time he was President of the State Board of Medical Examiners, and while I was in Vienna in 1929 I think my term of office expired and my brother was appointed and continued on as a member of the State Board of Medical Examiners and Secretary for many years, and was at the time he died a little over a year ago.

Q. He was on the Board for about twenty years? A. Yes, pretty close; I think from about 1929 until the time of his death.

2119 Q. Did you yourself ever become a member of the Board of Censors of the Multnomah County Society? A. I served on that Board at one time. I can't recall just which years. It was probably somewhere about 1938 or 1939, something like that.

Q. That was after you had been called up before the Board. You were not a member of the Board when they called you up? A. No, indeed. It could have been four or five years later.

Q. While you were on the Council of the State Medical Society was there ever any proposal to prevent doctors from taking tickets, that you can recall, at any Council meetings? A. No, I don't recall any such incident of that sort.

Q. Nor at the time when you were on the Council of the Multnomah County Medical Society? A. I served two terms I think of three years each, and I am pretty certain that it expired in about 1942 or 1943. I possibly started in about 1938 or '39, somewhere about the same time that I became a Director of the Multnomah Medical Service Bureau.

Q. If you served two terms of three years each— A. Yes.

Q. —and started in 1937, that would go beyond 1942.

A. '38 to '39 would be one year, and six years would have taken it up to 1944, wouldn't it?

Q. Yes. A. I don't believe it was before 1938. That is about my recollection. I think it might have been
2120 1938.

Q. After the year 1940, at any Council meeting of the Multnomah County Medical Society, was there ever any proposal to attempt to prevent doctors from taking tickets? A. I would say no. The only effort—and I was really, I might say, militant during the period when I served on the Executive Committee of the Multnomah Medical Service Bureau, as Vice-President, and we had meetings as often as once a week sometimes, and as President I gave a good part of my waking moments to thoughts of the Multnomah Medical Service Bureau, and it was a very definite problem. We were in a competitive business with hospital associations and it was a very definite problem. Some of our members, all of whom, as I recall, like myself had agreed in joining Multnomah not to work for any other organization, and that of course to me was a principle, a business principle; after all, it was my organization, and it was the organization of each man that belonged to it, and I can recall at one large meeting, attended by a great many of the members of the Multnomah Medical Service Bureau that we had several of the men from the St. Johns District, and that at that time had always been an area of more or less controversy because some of the big industries there—

The Court: "Area of conflict." That is a legal term now being used a great deal.

A. "Conflict"?

2121 The Court: Yes, instead of "controversy." I thought maybe you would want to adopt it.

A. Maybe you are right. The doctors down there did not seem to realize the importance of working for their own organization, and we called them in to this meeting of the Medical Service Bureau, the Multnomah Medical Service Bureau, and panned them plenty on the situation, and pled with them. We had no way of threatening them. My idea was that they should either work for Multnomah or someone else, but certainly we had no way of throwing them out of the Medical Society or disciplining them in any way, except to tell them that they could not work for Multnomah any more, which we never did.

Q. What do you mean, which you never did? A. How?

Q. You say, which you never did? A. Which we never did. We never told them, "If you don't refuse to take tickets and service these other companies, you can't work for Multnomah any more; we are going to throw you out of Multnomah." That would have been my idea. I preached it, but I never got anywhere with it because I was just one opinion in this wilderness of conflict.

Q. Just a voice in the wilderness? A. Just a voice in the wilderness is a good term, yes.

Q. But the voice in the wilderness did not get very far this time? A. That is as far as I got. They went
2122 right out—they told us openly in that meeting, attended probably by seventy-five doctors, that they would do as they pleased and take tickets from whom they pleased, our own members. Those men are still members of the Medical Society and probably are still members of OPS. I am quite sure.

Q. Are you one of the cooperating physicians of OPS? A. I am.

Q. Do you take tickets from any other organization? A. Tickets—that doesn't mean too much to me. I used the expression but I seldom have any tickets of other organizations. I have seen possibly a half-dozen of them in several or ten years. I have treated patients of these other organizations on a number of occasions. Most of the time I find out from the patient after my treatment is completed, and my secretary brings in a statement—or somewhere along in the line of treatment—that this particular patient is a patient of the National Hospital Association or the Industrial. Sometimes the patient says, at a stage of the treatment or after the treatment is completed, "I belong to the National," and I say to him, "I don't care where you belong. We will give you a bill when it is ready, and you pay me. I don't care where you get your money." That has been my attitude.

Q. I don't know whether you testified about your position at Holladay Park Hospital. A. I said I was
2123 chief of the surgical staff. I am also secretary of the Board of Trustees. I have been on the Board of Trustees for I should say thirty years.

The Court: Is that the present name?

Mr. Jaureguy: Instead of Hahnemann, yes, your Honor. It used to be Hahnemann.

A. Holladay Park.

The Court: Who owns it?

A. It is a community hospital, sir. It is an eleemosynary institution, always has been. It belongs to the people and I am one of the trustees.

The Court: Who built it?

A. It was built by a Board of Trustees, started back in the days when—

The Court: Where did they raise the money?

A. Entirely by gifts and contributions.

The Court: About when was that?

A. It started about in 1905. I went on the Board about thirty years ago.

The Court: Wasn't it a homeopathic hospital?

A. It was started as such and then it was finished by the Government as a veterans' hospital, and then some Board of Trustees, several years after the veterans were through with it, raised money, borrowed money, and finished it up as a general hospital.

2124 Mr. Jaureguy:

Q. Dr. Ullman I think testified he was a member of the staff of Hahnemann Hospital? A. That is right.

Q. Was there any discrimination either against him, on account of Permanente connections, or against other doctors on account of prepaid medical plans? A. Certainly not. I sat alongside Dr. Ullman at the annual meeting Monday night, this last Monday night, and there were at that time, it seems to me, something like fifty-one doctors, of which number ten or a dozen were Ullman's associates from Permanente.

Q. You have been charged here that ever since the first of January, 1936, you were a member of a conspiracy for the purpose of destroying prepaid medical care plans. Do you admit or deny that? A. Well, I certainly do not admit it. I certainly have been no partner to a conspiracy. If I have done anything against any prepaid medical care plan, it would only be in the same way that Meier & Frank does something against, let us say, Lipman & Wolfe, in a competitive way. I have felt—

Q. You mean that Aaron Frank does not go to Lipman & Wolfe to buy his shirts? A. True enough. They are not

advertising Lipman & Wolfe's business, and they are not working for Lipman & Wolfe. I imagine they would hesitate—

2125 Q. You are referring now to your voice in the wilderness, this voice in the wilderness of the Multnomah Medical Service Bureau? A. Somewhat, yes. I feel that my allegiance was to the Medical Society organization, which was established for the purpose of furnishing better prepaid medicine to the people, and I felt we had a better type of goods to offer to the people and I was promoting it and pushing it and trying to get business, let us say, from the competitor and to get business before the competitor got it, by giving better service. If that is something in restraint of trade, that is as far as it went in my activity.

Q. Were you allied with the other defendants here in doing anything of the kind, Dr. Martzloff and Dr. Leitch and Dr. Hunt and Dr. Brennan— A. No, I would say that maybe Leitch and maybe one or two other men were fairly active in the same sort of thing that I was. Certainly Martzloff never was. I could never see where Martzloff could be accused of attempting to do the same things I could, because I thought he was entirely against any kind of a prepaid plan. He thought that was stepping into the prerogative of private practice. That is the impression I always had about Martzloff's attitude.

Q. Dr. Hunt was not combining with you to promote Multnomah, was he? A. I never had any contact that I can recall with him. I might have sat—maybe so

2126 and maybe not—in a Council meeting with him from time to time, but I never knew of his activity in connection with promoting, certainly, any of our activities in Multnomah or OPS, as little as I knew of OPS.

Q. Have you ever, either individually or as a member of the staff of the hospital or otherwise, or in connection with others, tried to induce hospitals not to take doctors on their staffs because of some relationship with prepaid medical care plans? A. No, I never have.

Q. Or not to take patients? A. Never have.

Q. Or tried to induce doctors not to consult with doctors that are practicing prepaid medical care plans? A. Never.

Q. As a member of the staff of Hahnemann or Holladay Park Hospital, and the chief of staff, I think you have already testified you have doctors on the staff who were— A. That is right.

Q. Did you ever oppose that? A. Never.

Mr. Jaureguy: You may take the witness.

2127 Cross Examination

By Mr. Marcus:

Q. It is true, is it not, that since a rather early period you have been interested in prepaid medical care? A. From what period?

Q. A rather early period? A. Yes, I would say so.

Q. In fact, you once proposed a plan, I believe it was away back in 1937, to the State Society dealing with the Multnomah County Society? A. I am not so sure about that. I may have—I was one of the early proponents. I would say, of the Blue Cross here, probably at its very inception.

Q. Will you look at the next to the last paragraph, please, of Exhibit 730 on the first page and see whether that refreshes your recollection. A. Well, it does not refresh my mind as to the particular proposition. I don't know whether that has to do with Blue Cross, but of course, thirteen years ago, my activities in that connection are terribly hazy. It might have been seventeen years; it might have been eight years.

2128 Mr. Marcus:

Q. Well, about how long has Blue Cross been in the State, do you have any idea? A. I think it's probably longer than '37, because, as I recall—

Q. Well, you think it was probably before that time? A. Well, now, I wouldn't know. It would be only a guess, it would be only a guess.

Q. And it was subsequent to that time, was it not, that you were called up before the Board of Censors? A. Subsequent o '37?

Q. Yes. A. It might have been just—it might have been before. I might have been called before the Board of Censors before that date. Now, I wouldn't know that.

Q. Doctor, you said you thought that after you withdrew from Industrial you thought your brother did not, is that correct? A. Yes. I think he continued to take care of their patients probably right up to his death. Now, that is merely a surmise because I am quite sure that he did for some years after.

Q. Well, Doctor, I have here Exhibit 1958 and one item is a letter from you to Stanley Lamb, and the letter is dated July 19, 1938, and it says:

"This is to notify you that my brother and I resigned from the Industrial Hospital Association on May 23, 1938."

Now, does that suggest to you that you may be mistaken as to what your brother did? A. Yes, it does, if it
2129 is signed by me.

Q. Well, will you kindly look at it. That was signed by you? A. Yes.

Q. And now, Doctor, you stated, I believe, that shortly after this incident you joined the Multnomah Industrial Hospital Association. I believe what you meant, is it not, that you joined the Multnomah Medical Service Bureau? A. Well, I don't know whether it was called the Medical Service Bureau at that time. It changed its name some two or three times, and it might have been called the Medical Service Bureau then, but I had the idea it was called the Multnomah Industrial Hospital Service, or something of that sort. I may be entirely erroneous in that.

Q. Well, do you recall whether during the period you were with that Association it was called the Multnomah Medical Service Bureau? A. It was called that, yes. Just when it changed its name, whether it changed its name after I made my application or not I am not certain.

Q. And do you recall the Medical Service Bureau being called on the carpet by the Medical Society? A. Well, I know that there had been considerable argument back and forth between the Service Bureau and the Medical Society, but that is not very fresh in my mind as to just when it happened. I don't think it happened after
2130 I was an officer of the Multnomah Medical Service Bureau.

Q. Well, you say you were an officer prior to 1940? A. Yes.

Q. And then you said you were an officer up to the day of its demise, is that correct? A. Yes.

Q. Well, Doctor, I have here Exhibit 2020 which consists in part of a report of the Board of Censors of the Multnomah County Medical Society, February 20, 1940, and it starts out by saying that:

"Certain information relating to the activities of the Multnomah Medical Service Bureau, which was approved

by the Council on June 14, 1939, as an agency to provide medical care to low-wage industrial groups in Multnomah County, has come to the attention of the Board of Censors." And then they list the matters which they are concerned about, and one of those matters is that:

"Within the past year the Bureau has entered into a contract to provide medical and hospital care in accidents to a group of students at Reed College.

"It would appear that the making of contracts with groups of this type is in conflict with the declared objective of the Bureau to devote its efforts primarily to providing medical care to low-wage industrial groups."

Now, does that recall to your mind the Multnomah
2131 Medical Society taking up with your group this matter I have just read, or is that— A. No, I have hardly any recollection of that. It may be hazy knowledge, but very little.

Q. You don't recall whether that matter was taken up before the Council, do you? A. The Council of the Multnomah?

Q. Of the local County Medical Society. A. No, I wouldn't recall that.

Q. Do you think that was probable or possible? A. It could have been brought to the attention of the Council and I might not have been at the meeting, or if I had been I wouldn't recall the detail of that incident.

Q. We have a document here which indicates you were present, Doctor, but inasmuch as you don't remember that you were present I won't continue it.

Now, Doctor, I believe you said that you held no office with OPS. A. That is right.

Q. And was not on its Board of Directors? A. That is true.

Q. I believe you also said that you were not on any of its committees. A. In connection with OPS?

Q. Yes. A. I was on no—I may have been on a
2132 committee of the Council that had something to do with contract practice or something of that sort, but not on any OPS committee, that is appointed by OPS or any governing body or functioning officer of OPS. I had no connection with them.

Q. Well, Doctor, if I suggest that you were on the Public Relations Committee of OPS, would that refresh your

recollection? A. I don't recall such a committee. You are sure it wasn't a committee of the Council?

Q. Well, Doctor, I show you Exhibit 417 and ask you to look particularly on the second page and see whether that refreshes your recollection. A. It doesn't refresh my recollection. My name is there as a member of the Public Relations Committee. It must have been a very important functioning committee, because I don't recall them ever having a meeting.

Q. Well, Doctor, during this period while you were with the Medical Service Bureau and subsequently you were aware, were you not, of negotiations going on between Blue Cross and that Bureau and OPS with respect to possibly coming to an agreement whereby Blue Cross would not go into medical service and these other bureaus would confine themselves to hospitalization; you were aware of that? A. And the other bureau would confine themselves to what?

Q. Well, confine themselves to medical service.

2133 A. I don't recall that there was any threat particularly that Blue Cross would go into medical service. You made that statement also.

Q. Yes. A. Well, I don't recall that there was any threat that Blue Cross would do that. There were some conferences. I think I attended two conferences between groups of hospital people and doctors, some of whom were officers of the Medical Service Bureau. I don't know who called the meetings and it was—those meetings were along the line of having the Blue Cross furnish hospitalization and the Medical Service Bureau confine its services to the furnishing of medical service.

Q. Well, isn't it true, Doctor—I am trying perhaps to arouse your own recollection without going into documents—but isn't it true that you participated in the discussions as a representative of these bureaus and of OPS and on behalf of the society sponsoring those bureaus? A. I participated in, I think, two meetings, and I am sure that I was called to the meeting because of my connection with Medical Service Bureau. I don't know exactly when those meetings were held. It might have been when I was an officer of Multnomah.

Q. Well, Doctor, are you stating now that you don't recall in what capacity you participated in these discussions? A. Well, I am sure I don't.

2134 Q. You were present, were you not, at Council meetings of Multnomah Medical Society at which

this subject was discussed? A. Of the divorcing of hospital care from medical service bureau care, you mean?

Q. Well, in so far as effecting that sort of relationship with Blue Cross. A. And the effort to have Blue Cross make some sort of an arrangement whereby they would take care of the hospital service and the Medical Service Bureau take care of the medical service? The purpose of those meetings, as I recall, being to make it possible to sell that sort of thing in what you might call one package.

It is fitting for me to give you my opinion of why—you want that?

Q. No. Doctor, I am trying to find out, my particular question was whether you were present at meetings of the Council when these matters were discussed. A. Well, now, they probably were discussed at meetings of the Council and they might have been discussed while I was present.

Q. I would like to have this marked.

(Photostatic copy of letter by Mr. Nelson to Northwest Hospital Service Plan, so produced, was thereupon marked for Identification Plaintiff's Exhibit No. 2070;

(Photostatic copy of minutes of meeting of Exec-
2135 utive Committee of Northwest Hospital Service Plan, September 9, 1942, was thereupon marked for identification Plaintiff's Exhibit No. 2071.)

Mr. Marcus:

Q. Now, Doctor, I have here Plaintiff's Exhibit marked for identification 2070, and that is a letter to the Northwest Hospital Service Plan signed by Mr. Nelson to Willard Marshall, care of the Multnomah Medical Service Bureau, and states:

"The Northwest Hospital Service Plan has considered at length a plan of cooperation with Multnomah Medical Service Bureau set out in your statement. The recommendations of the Board of Trustees of Northwest Hospital Service Plan regarding the further activities of their corporation and relation to your proposal are the following:

"1. Northwest Hospital Service Plan shall not enter the insurance field for the present, provided that Multnomah Medical Service Bureau immediately institutes and aggressively promotes a campaign for the sale of family hospital coverage. Northwest Hospital Service Plan intends to enter

this field only if satisfactory coverage is not effected by your organization."

Doctor, does that refresh your recollection as to whether or not the Northwest Service Plan, which is Blue Cross, was not contemplating the possibility of going into the medical service field? A. Well, I think that probably that
2136 should be subject to some clarification. Northwest Service Plan is now doing exactly what was indicated in that letter in an indemnity form, and I don't think they ever intended to do anything different.

Q. But at that time they were not even doing that, isn't that so? A. That is true.

Q. Now, Doctor, I have here Exhibit 773 which consists of the August 25, 1942 minutes of the Multnomah County Medical Society, and it is stated there that:

"Dr. Besson, President of the Multnomah Medical Service Bureau, presented a proposed plan of cooperation between the Multnomah Medical Service Bureau and the Northwest Service Plan that had been developed by the Board of Trustees and the Board of Directors of the Bureau."

A. Board of Trustees?

Q. Yes. A. Which Board of Trustees? It doesn't say.

Q. No, it doesn't say, Doctor. My question is whether that refreshes your recollection as to your part in these negotiations. A. Not particularly.

Q. Can you tell us at present what that proposed plan of cooperation was in general? A. Well, I imagine it was something that I had in mind a few moments ago when you stopped me. It was a plan where the Northwest Service or Blue Cross would furnish the hospitalization on a
2137 contract and Multnomah would furnish medical care. That sort of thing was in a way carried out with the shipyard contract which was shortly afterward made with OPS and Blue Cross. I think the principal thing that we were trying to work out in any sort of a plan was to avoid two overheads, that is that it wouldn't be necessary for the Blue Cross to go, we will say, to the Iron Fireman and send a salesman down there and get the men signed up on hospitalization and then for the Multnomah Medical Service Bureau to send another salesman and go over the same field and sign them up for medical service. I think that is the only thing that was being tried or that we were trying to iron

out in these various conferences, some method of approach that would save two overheads.

Q. Well, to the best of your knowledge did these negotiations take place, say, from 1941 up to 1947? They were continuous? A. I doubt that, but I wouldn't know because the only negotiations that I recall that I had any part in were certainly in the course of a year or two, and as I recall I only sat in on two meetings and it must have been in the course of one year.

Q. Well, it is your recollection, is it not, that the parties were more or less agreed in principle but they kept falling apart on details? A. I think so. I think they were both striving for this thing that I have been trying to
2138 explain to you.

Q. Now, Doctor, do you recall whether the negotiations between the Multnomah Medical Service Bureau and the Northwest Hospital Service Plan went so far as to the actual formulation of a proposed agreement? A. Oh, I think it might have, I think it might have, yes.

Mr. Marcus: May I have this marked, please.

(Photostatic copy of proposed form of agreement between Multnomah Medical Service Bureau and Northwest Hospital Service Plan, was thereupon marked for identification Plaintiff's Exhibit No. 2072.)

Mr. Marcus:

Q. I show you Plaintiff's Exhibit marked for identification 2072 and ask whether this seems to you to represent the proposed agreement I was just referring to.

The Court: Recess.

(Short Recess)

2139 Q. Before the intermission I believe I was asking you whether, after looking at this, that seems to you to be the proposed agreement that was drawn up at that time? A. No, I wouldn't know, sir. I don't know who composed it or anything about it. I can't recall ever having seen that. I may have in my own personal files two or three attempts to make some sort of an agreement. That is probably someone's attempt. I can't recall that I ever saw it before.

Q. Well, something similar to this was what was proposed, is that not so? A. It may have been, somewhat. I mean "discussed" rather than "proposed."

Q. Well, I understood a little while ago before the recess, when I asked you whether you thought the negotiations had reached the stage of an agreement, a proposed agreement having actually been drawn up—you said yes. A. Did I say yes?

Q. That is the best of my recollection. A. Or "probably" or something like that?

Q. I believe you said you did not recall playing any part in similar negotiations after you severed your connection with the Multnomah Medical Service Bureau? A. I don't think I said that. I am very hazy of just when these meetings that I attended took place. They were somewhere about that time; my guess would be that it was before
2140 I was through with the Multnomah.

Q. Well, Doctor, I will call your attention to one paragraph in Exhibit 355, which comprises the minutes of the Council of the Oregon State Medical Society of February 5, 1944. This states:

"Dr. Besson, Chairman of the special committee appointed to study and submit recommendations concerning the relationship of doctors to commercial hospital associations, railroad contract practice, and relations between Oregon Physician's' Service and Northwest Hospital Service Plan, reported that the committee had held two meetings with representatives of the plan and that, as a result of these meetings, a proposal for a cooperative agreement between the two organizations had been worked out.

"Dr. Besson stated he had recently received a letter from the Northwest Hospital Service Plan rejecting this proposal and indicating that it would be unwise to pursue this proposal further at this time."

Does that recall it to you? A. Yes.

Q. Does that recall to you, then, Doctor, that negotiations were going on from at least 1941 to the time of this report? A. If that is the correct time. That was in February, 1944, you say?

2141 Q. Yes, February 5, 1944. A. 1944.

Q. Now, Doctor, on or around that time didn't you and other representatives of the State Society and OPS meet with a group from the hospital to discuss these matters? A. Well, I don't know when we had those meetings. I had the idea, as I stated before, that it was a good bit earlier than that. I don't know whether these notes you have just read from the Council refer to the meetings that I at-

tended, at which probably may be twenty or twenty-five people were present, or whether these were the result of possibly a conference with two or three, that two or three of us had with two or three others, of which I may have had many.

Q. Do you recall your being present at some such meeting around this time at which one of the doctors proposed that the hospitals get together with you people and, along with doing that, not to take hospital association patients as hospital patients? Isn't that so? A. I would not recall that. That is too intimate a detail of what somebody said at a certain meeting. I may have heard a statement of that kind in talking with a friend on the street, and I certainly would not want to attribute a statement of that sort as made in one particular meeting.

Q. Are you acquainted with Mr. Nelson of the Portland Sanitarium? A. Yes, I am.

2142 Q. On direct examination of Mr. Nelson I showed him an exhibit marked No. 1881, which purported to be a memorandum of one of these meetings. After looking at this memorandum he stated that with the exception of two places, one of them being the place covered up at the bottom of the second sheet, that this represented his recollection.

I would like to show this to you and ask you to look at it, unless you would rather have me read it and then ask you whether you recall it. A. That is all right. This is his recollection of what went on at a certain meeting?

Q. That is right.

Mr. Jaureguy: No, that is not right.

Mr. Marcus: With the exception of two instances.

Mr. Jaureguy: No. If the witness wants to know about this memorandum, he ought to be told that he asked whether it was a certain thing and that was not correct.

The Court: You can each state your views about it.

Mr. Jaureguy: What is that, your Honor?

The Court: You can each state your recollection.

Mr. Jaureguy: May I state mine now?

The Court: Yes.

Mr. Jaureguy: My definite recollection is that this is an unsigned memorandum; it does not purport to be drawn up by anybody who was present, and the only informa-

2143 tion we have about it is that it came out of the files of the National Hospital Association.

The Court: Now, Mr. Marcus.

Mr. Marcus: Let me add to that: I agree perfectly with Mr. Jaureguy with the exception that at that time Mr. Nelson was shown this memorandum and what I have just said about that witness is correct.

Mr. Jaureguy: I don't agree with it.

Mr. Marcus: He agrees with what was said in that memorandum, with the exception of two instances.

The Court: What do you want to ask Dr. Besson about it?

Mr. Marcus: I want to show him that and see whether that refreshes his recollection.

The Court: Ask him. It would be faster. Come on, let's get along. We have had a slow morning.

Mr. Marcus: I don't believe he has had time to read it.

The Court: I will decide that. You ask him now.

Mr. Marcus: I think I am entitled to have the witness read it. I have been asking particular questions about that.

The Court: Listen. Do not argue with me. Give it to me, Dr. Besson.

I want to move this along. It is dragging exceedingly. You step off the stand, Doctor, and go down and read that at your leisure.

Put on another witness, Mr. Jaureguy.

(Witness temporarily excused.)

2144 Dr. E. G. Chuinard was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is E. G. Chuinard? A. Yes, sir.

Q. You live in Portland? A. Yes.

Q. What is your business or profession? A. Practicing physician and surgeon.

Q. You have been practicing how long? A. Since 1939.

Q. Where did you get your medical education? A. At the University of Oregon Medical School, graduating in 1934; interned at the Medical School Hospital and Clinics from 1935 to 1936 and then from then on—from 1934 to 1935, and from 1935 to along about 1939 I took four years additional work in my specialty of orthopedic surgery.

Q. Are you practicing medicine and surgery alone or in partnership? A. No, I started practicing with Drs. Dille-

hunt and Lucas. Dr. Dillehunt is now retired, and in our office we also have now Dr. Begg and Dr. Noall.

2145 Q. You have been practicing in Portland continuously during this period of time? A. Yes.

Q. Are you a member of any medical society? A. Yes, Multnomah County Medical Society, Oregon State, and the American Medical Association, and then specialty organizations, orthopedic specialty organizations—do you care about those?

Q. Would you tell us about several of them? A. The American Academy of Orthopedic Surgeons, the North Pacific Orthopedic Society, the North Pacific Surgical Society—

Q. Have you ever been an officer of any of these medical societies you have listed? A. Yes, I have been Vice-President of the North Pacific Orthopedic Society a year ago.

Q. I think perhaps that we should confine the offices to the Oregon State Medical Society, the County Society and the American Medical Association. A. I am now a Vice-President of the Multnomah County Medical Society and I have been on the Council of the Multnomah County Medical Society for four years.

have no contact with Dr. Schaefer than to see the application.

Q. Have they ever been denied membership, or what has happened with respect to them? A. No, their membership, along with that of many others, is being held in suspension at the present time; no action has been taken.

Q. Anything else? A. No, I believe that is all the offices.

Q. Are you on any committee or board? A. Yes, I have been on various committees. One I am now on, have

2146 been on—and still am—in the Multnomah County Society is the Chairman of the Board of Censors.

Q. You have been on that how long? A. Since 1946. No, since 1948. I have been on the Council since 1946 and on the Board of Censors since 1948.

Q. Does the Board of Censors have anything to do with the admission of applicants to membership in the Society? A. Yes. The names of the applicants are read to the Society and referred to the Board of Censors for investigation, which makes recommendations to the Council then, and back to the Society.

Q. There has been some testimony here about three doctors at Permanente, Dr. Hacker, Dr. Button and Dr. Schaefer. Do you know them? A. I met Dr. Button, talked on the phone with Dr. Schaefer or Dr. Hacker, rather, and

The Court: What?

A. Been held in suspension.

The Court: Why?

2147 A. Why?

The Court: You just said why, didn't you?

Mr. Jaureguy: No.

A. No, I didn't.

Mr. Jaureguy:

Q. But tell us why. A. The last members that were voted into the Multnomah County Medical Society were in December, 1948. Some memberships were issued after that because the doctors had paid their dues and sent through—

The Court: Will you talk louder, please?

A. Had paid their dues and sent through their applications at that time, but other memberships—

Mr. Jaureguy:

Q. That is, they had been admitted, voted in in 1948 and did not pay their dues until 1949, is that it? A. The membership installation was not completed until that date. About this time we were getting a good many applications and various factors came up for discussion in the Board of Censors. We were aware that this lawsuit was on, and that any action that was taken by the Board of Censors and the Society as a whole might have certain implications that otherwise they would not have.

It was decided by the Board of Censors that no other applicants would be recommended for membership, as the one and only course we could pursue which would be equally applicable to everyone and not be lent any misinter-
2148 pretation. Therefore, no other applicants were recommended.

The Court: How many applicants do you have that are suspended for that reason?

A. I checked up a few days ago and there were about fifty-five applying for active membership and about twenty-two for associate membership.

The Court: You are holding them in suspension for the reason you have stated?

A. That is right.

Mr. Jaureguy:

Q. Did you realize when that action was taken that it would be so long before this lawsuit was disposed of? A. No, but according to our usual practice and the constitution and bylaws that have been established for years in the Medical Society, everyone goes through a six-months' waiting period, after their applications, so that would take care of a number of these. I went through the same thing and every other man who is a member of the Medical Society has.

The Court: What is that for?

A. Investigative purposes, to find out about them, to see if they are going to stay here, to see how they started their practice—I suppose more or less for the same reason that a man cannot vote for six months when he moves into a new location.

Mr. Jaureguy:

Q. You say to see whether he is going to stay here. Is permancy of residence one of the factors to take
2149 into consideration? A. Very appropriately so. The fact is, in connection with Dr. Hacker's application, she called me on the phone about it and told me herself that she had applied once and then moved away, and she got married and came back and re-applied. We called her, as we did Dr. Button, to come in for a conference, and she was gone again. That is one of the reasons, in addition to the others, that her particular application has not made any further progress.

The Court: What happens to these men during that period of six months, during that six-months' period? Do they have hospital privileges?

A. Yes, they have, as far as we are concerned. We have nothing to do with that. Most of them do—they can apply for membership in a hospital. They do not have to be a member of the Medical Society in order to get an application for a hospital, as far as I know. They don't, the ones I am associated with, and they start practicing.

The Court: What hospitals are you associated with?

A. Emanuel Hospital and Portland Sanitarium.

Mr. Jaureguy:

Q. As to some of these that are in suspense, have they

been admitted to hospitals that you know about? A. Yes, I am sure that is so.

Mr. Marcus: I move to strike that out if that is the best answer that the witness can give.

Mr. Jaureguy: I don't know of any better answer
2150 than being sure.

The Court: Motion denied.

A. I am quite sure the three names that have been just mentioned are on hospital staffs in Portland, these three doctors who have made application here.

Q. Do you know whether there are other Permanente doctors that are members of the Medical Society? A. Yes, there is one—Dr. Ullman was a member of the Medical Society and still is. His membership was not severed because he associated himself with the Permanente. Dr. Mossman, I believe, was taken in after he was there. That was before my time on the Board of Censors.

Q. Were you in the courtroom when Dr. Klingler testified? A. I was in here after a part of his testimony had been given. He was on the stand when I arrived.

Q. He testified about a meeting that he attended at which you were present and some of the other members of the Board of Censors were present, and he said somebody there told him that he could not get into the Medical Society if he took the tickets from hospital associations. Did anybody make that statement at the meeting? A. No, definitely not, and I did not personally make any such statement to him after the meeting, nor did anyone else.

The Court: Was that a young fellow? I am trying to identify him. Was that a young fellow?

2151 Mr. Jaureguy: Yes. I am trying to identify him in my mind myself. He was a comparatively young man.

A. Yes, dark-complected, slight, wears glasses.

Q. Can you tell us briefly why he was rejected from the Medical Society? In the first place, you are on the staff of Emanuel Hospital? A. I am, yes. I was also on the Executive Committee at Emanuel Hospital, where I had opportunity to know that Dr. Klingler—

The Court: Is this something derogatory?

Mr. Jaureguy: Yes, it is, I am sorry to say.

The Court: I want to think about that in view of his testimony—what it was. I don't remember what his testimony was.

Mr. Jaureguy:

Q. I will leave that out and put it this way, then:
2152 (Continuing)

Q. Was it something that had any connection whatsoever with any connection of his with any prepaid medical care plan?

Mr. Marcus: Your Honor, let me explain to the Court our position on that. I have no interest in any way in anything derogatory here. I have a distinct interest in being advised as to why this doctor says this man was not admitted so that on rebuttal I can meet whatever statement this doctor makes. In other words, I am willing, with the Court's permission, to accept this doctor's statement, if he is going to make the statement, if the doctor will tell me personally today what that statement was so that then I can check on it.

The Court: Mr. Jaureguy will tell you; not the doctor. Ask your question in revised form.

Mr. Jaureguy:

Q. Did you get my last question?

The Witness: I would like to hear it again.

(Last question read.)

A. No, that was not the thing.

Q. I meant to ask whether, in addition to that, it had anything to do with any direct or remote connection with his activities outside of the hospital? A. No.

Q. Who was on this Executive Committee of the staff? A. At Emanuel Hospital?

Q. Yes, besides you. A. Well, Dr. Severeide, Al-
2153 bert Severeide, was president of the staff at that time. Of course, Mr. Hansen, Paul Hansen, is the administrator of the hospital. The whole group includes about twenty people, all of whom I can't remember.

Q. Willis Watson? A. I am sure that he was there.

Q. Now, do you recall writing a letter with regard to Dr. Klingler to Dr. Gilstrap of LaGrande? A. I do.

Q. With respect to Dr. Klingler? A. Yes.

Q. I am reading now from Pre-trial Exhibit 2709, in which you say among other things, referring to Dr. Klingler: "He has always been of excellent character and I am sure he has high personal medical standards and medical ability." You indicate in your letter that you understand something of his situation, and then I omit something. It is not derog-

atory, but I will omit it. "If and when he moves to LaGrande I am sure the reasons now influencing his denial of membership will not then exist. I recommend him to you very highly." Now in that last paragraph did you have any reference whatever to anything connected with prepaid medical care? A. No. In fact, so far as I knew, prepaid medical plans existed there and he would be practicing in that sort of a situation. And as far as I know the doctor that inquired of him also participates in those plans.

2154 Q. Dr. Willis Watson, was he ever president of the staff at Emanuel? A. President of the staff?

Q. Yes. A. Yes, he was.

Q. Did you have anything to do with that? A. I was Chairman of the nominating committee who placed him in nomination for president of the staff of Emanuel Hospital.

Q. Do you know whether he has any connection with any prepaid medical care plan? A, Yes. Yes, I understand that he is one of the officers of the Industrial Hospital Association. He also was not a member of the Medical Society at the time that he was so nominated and so elected.

Q. Now in your practice, you and Dr. Lucas, in your office in general have you had occasion to take care of patients who are members of the National or Industrial Hospital Associations?

Mr. Marcus: I want to make the same objection to this line of testimony as with respect to Dr. Durno.

The Court: Answer, subject to the objection.

A. Yes, we do.

Mr. Jaureguy:

Q. How do you handle them? A. We handle them as private patients. We have no set rule that because they are a member of any Industrial Hospital Association or National, but we take them on the same basis as Oregon Physi-

2155 cians' Service or the State Industrial Accident Commission. We try to handle them as private patients. Our desire always is, as much as possible, to present the bills to the patients and have the patients know what their bills are, and have the patients where feasible and possible receive remuneration from the insurance companies.

Q. Do you in the manner and method of your treatment discriminate in any way against them? A. No. In fact, I have directed the girls in our office not to put on any slips or on the outside of their charts when they come to me

whether they are Oregon Physicians' Service or any other organization.

Q. You are not interested in that when you take care of them? A. No, nor whether the patient can pay himself or not. We take care of the patient as a patient.

Q. Do you know whether at times you have accepted checks from these commercial hospital associations? A. Yes, I am sure that we have. There are certain exceptions that I can see under which any doctor has to do so. For instance, the State Industrial Accident Commision has a contract in some location with some company, and they sublet it or make some arrangement with, we will say, the Industrial Hospital Association. And not so long ago, I made recommendations and the State sent me a copy of the letter which they sent to the patient and to the Industrial Hospital
2156 Association directing them to authorize me to carry out certain surgery. That is, the Industrial Hospital Association apparently handles all that business. Now they pay us right on State rates.

Q. That is, they pay you directly on those cases? A. Correct.

Q. And you do accept the checks? A. Yes. That is a legal setup that we can't decide on.

Q. Now, your work is orthopedic work? A. That is right.

Q. Are there occasions when officers or agents of the National or Industrial call you with respect to patients? A. Yes.

Q. What do you do then? Do you refuse to talk to them? A. Well, we provide them with any information and a report, full report of the patient's history or, if it is a form they have to fill out, an itemized statement.

Q. You don't refuse to talk to them, then, and give them all that information? A. That is right; whatever is necessary for service to the patient so they can get their service, we do.

Q. Now, you have been on the Council of the Multnomah County Medical Society for four years? A. Yes.

Q. During any of that time has there been any proposal in the Council that any effort be made to stop doctors
2157 from taking tickets from hospital associations? A. Not at any of the meetings at which I have been present, and I think I have attended perhaps 80 per cent of them.

Q. Have you heard of any such suggestions? A. No.

Q. Or have any officers of the Society made any suggestion to you other than at meetings? A. No.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you are quite well known in your profession, are you not? A. As far as I know, I am.

Mr. Jaureguy: Counsel didn't ask him whether he was favorably known, just whether he was well known.

Mr. Marcus: I will ask that question if Mr. Jaureguy wants me to.

Q. Are you favorably known?

The Court: I will answer he is. We have had him here many times as a witness.

Mr. Marcus:

Q. Now Doctor, getting back to these three doctors from Permanente, you are aware, are you not, that the medical societies in the State of Washington took up this matter of the recognition of doctors connected with Northern Permanente with the Judicial Council of the American Medical Association? A. No, I didn't know that.

2138

Q. Who else is on this Board of Censors? A. Well, that has been a varying committee. Dr. Bolton, Dr. Meienberg, Dr. Murphy and Dr. Irvine and myself have composed the committee during various years. There are three members currently on it.

Q. Are you willing to make the statement that you are familiar with all the activities of that committee? A. I believe so. I don't believe there have been any meetings that I haven't been at.

Q. You don't have any recollection of the State Society or your Board corresponding with the AMA with respect to this matter? A. No, I don't. I have never seen the correspondence.

Q. Now Doctor, you stated that the last time you admitted anyone was December, 1948, to membership; is that not so? A. Yes, I am quite sure that that is correct.

Q. Is it your understanding that these three members of Northern Permanente made their applications within six months of that period? A. Well, I think that you have

those applications. They have come along at different times. I can't remember each one. I think one of them has
2159 possibly come in within the six months period.

Q. You don't know whether or not these applications were not filed prior to the six months of December, 1948, do you? A. Yes, I do know some of them have been after that.

Q. Which ones? A. Well, I can't give you the exact dates, but I think that Dr. Hacker's application came in first and Dr. Button, and then the third doctor. I think that was the order of them.

Q. You are not willing to say now that you don't recall— A. I would have to look up the exact dates of those. I don't remember.

Q. As far as you know they may have been prior to that period? A. Prior to which period, now?

Q. Six months prior to 1948, December, 1948? A. I don't believe any of them were prior to that.

Q. You don't believe they were? A. Of these three, I don't believe any of them were. Dr. Hacker may have been. Now remember, according to the story I had from her, as I remember it, it was that she had applied once, but the application that I have seen, which may be her second one and undoubtedly is, I don't believe was very much prior to December, 1948.

Q. Doctor, let's face this: If these doctors had applied within this six months period and at the end of six months you had admitted them to the society, just what bear-
2160 ing would that have had on this case?

Mr. Jaureguy: Just a moment. I object to that as not a proper question to ask the witness.

Mr. Marcus: He made some statement that it was because of this case that they have not been admitted.

Mr. Jaureguy: Oh, that is what you are talking about. I will withdraw my objection.

The Court: Did you act on legal advice?

A. No, sir.

The Court: It was your own idea?

A. My own idea.

Mr. Marcus: I would like to have that question read to the witness so that we get an answer.

Mr. Jaureguy: I didn't understand your question.

The Witness: Shall I proceed and answer?

Mr. Jaureguy: Yes, go ahead.

A. Some of these doctors who were applying had even mentioned to us, "Well, maybe you will consider taking us into the Society now that you are being investigated." In fact, some of the men who resigned from the Society before, or who because of certain reasons—whatever the reason was I cannot be sure—have come up and asked us if they could get in now during this period. In other words, it very clearly seemed to us that there were people applying or knocking on the door now because they thought that under
2161 duress we might have to admit them to the Society.

Mr. Marcus:

Q. Now Doctor—

Mr. Jaureguy: Just a moment. He isn't through.

The Witness: What is it?

Mr. Jaureguy: I didn't think you were through. He interrupted you.

The Witness: I think I have said enough. That was our opinion. That was what we thought would be the fair thing to do. In fact, the fact is we have had a lot of men who have finished their training at medical school here in Oregon, have interned around here, have had residency for a period of time, that we have known. Those men have been cramped a lot more than others who would naturally be kept waiting anyhow simply because we wanted to lean over backwards in having a consistent pattern. We knew we wouldn't take everybody into the Society. There was just bound to be some that would not be accepted.

Mr. Marcus:

Q. Do I understand, Doctor, that after this suit is over you are going to admit these persons? A. I don't say that. That will be decided then. I am not even a member of the committee now.

The Court: You may not be alive.

The Witness: At the rate we are going, Judge.

Mr. Marcus:

Q. Now Doctor, you seem to know more or less what has been going on in society affairs here. You know, don't you, that since the beginning of this suit a number of doc-
2162 tors have been taking tickets who did not take tickets before. Have you heard that? A. No, I haven't been

here. I think a couple of times for a half hour or so I was here—

Q. No, no. I mean you have heard doctors in the city have been taking tickets, have you not, since the time of this suit whom you understood had not taken tickets before? A. I don't know of anybody specifically who started taking tickets because the suit was on.

Q. I am not saying because of the suit. I am saying since the suit started. A. Let's put it that way. No, I don't know of anybody who has definitely changed their procedure, we will say, since the suit was on. I know this: that in talking to different doctors, doctors with whom I have been practicing in Portland, there has been a definite fluctuation of procedure even by two doctors associated together who might have different attitudes on this matter.

Q. Now Doctor, getting back to the Klingler affair, who was it on your committee that brought up this matter which you say was the cause of the committee not accepting— A. I did.

Q. You did? A. Yes.

Q. You are the same person who wrote that letter 2163 to the doctor in LaGrande? A. That is right.

Q. Doctor, will you be available if, after learning from defendants' counsel the reason which we kept out of the record, I would want you to come back? A. I surely will.

Mr. Jaureguy: Not today.

The Witness: Oh, I thought it would be today.

Mr. Marcus: No, I would have to check.

Mr. Jaureguy: I have been told that the doctor has some plans for next week. That is why I am interrupting.

The Witness: Yes, next Tuesday in the afternoon two of us in our office were going to an orthopedic meeting in New York which we have been planning on for months. I would try to be available to you before that, but I would appreciate being able to get away on that trip that we planned.

Mr. Jaureguy: If your Honor wishes me to give the information to Mr. Marcus now I will give it to him in writing.

Mr. Marcus: That is all right, your Honor. The only thing is I would have to check.

The Court: Do it during recess. This will clear up all right. There is no problem about this.

Mr. Jaureguy: I have it right here.

Mr. Marcus:

Q. Now Doctor, did the reason for keeping Dr. Klingler out have anything to do with medical ethics? A. I
2164 think it does; yes, sir. I think it has to do with just ethics plain.

Q. Doctor, do you consider the taking of optical rebates within medical ethics? A. I have never had to study that question for myself, but I can see how I would feel about it.

The Court: I know. I will tell you what I think.

Mr. Marcus: I am trying to get an answer from the witness, your Honor.

The Witness: No, I don't think it is ethical. The fact is I know that one of the activities of the Council here during the last year or two was to have a committee to investigate the situation among doctors to try to control such a thing.

The Court: What happened to the case the Government brought in San Francisco about that, Mr. Marcus?

Mr. Marcus: There has been an action, I think in Chicago, your Honor.

The Court: What?

Mr. Marcus: I think in Chicago.

The Court: No, it was brought in San Francisco, a big case about three years ago. It was all about that.

Mr. Marcus: We will go on, Doctor—

The Court: No, I am asking you what happened to that case.

Mr. Marcus: That is still pending, your Honor.

The Court: That is what I wanted to know.

2165 Mr. Marcus: But I don't think it is in San Francisco. That is why I said in Chicago. My information is that it is filed in Chicago.

The Court: I know some doctors here that you sued, and I was kind of glad you did.

Mr. Marcus: I can tell you what I understand on that, your Honor. I understand—

The Court: A little later, then, we will do that. I have been wondering what had happened to that.

Mr. Marcus:

Q. Well, the Council has never actually brought up anyone for disciplinary proceedings, has it, Doctor, because of optical rebates? A. Not that I know of.

Mr. Marcus: That is all, Doctor, except that I may, as I say, want you to come back—

The Court: Come up, Dr. Besson. We are going to finish with you before we adjourn.

(Witness excused.)

2166 DR. JOHN H. BESSON, a witness produced in behalf of Defendants, thereupon resumed the stand and was further examined and testified as follows:

Further Cross Examination

By Mr. Marcus:

Q. Doctor, I will have to ask you this question before getting on to this document. During the recess didn't Dr. Leitch also look over this document? A. No, he didn't look over it. He looked over my shoulder for a moment there.

Q. While you were reading this document? A. That is right.

Q. Now Doctor, I think I was asking you at the time of the recess whether your recollection is refreshed by reading this document. A. Yes, I am sure I attended the meeting mentioned there, and there were remarks somewhat like that made at the meeting.

Q. Substantially it is correct, is it not? A. I would get the impression from reading this that no one talked at that meeting but Dr. Leitch. My recollection is that there was a general discussion there, and someone—I couldn't say that Dr. Leitch made those remarks. Someone made remarks to the effect that the patients of commercial hospital associations should pay their own bills and not be accepted as patients to be billed to the hospital associations. But I

2167 don't recall that there was any effort made to take that statement made by some one individual there as the sense of the meeting, by any means. It was just a remark of an individual as against the various remarks that were made at that meeting.

Q. I see. Well, what you say would conform more or less to what is stated in that letter? A. Except, as I say, it looks as though no one else talked at that meeting but Dr. Leitch.

Q. Now Doctor, it is true, is it not, that while you were a member of the Council of Multnomah County this question of doctors engaging in contract practices came up, did it not? A. I am sure it was discussed at various meetings.

Q. And during the time you were on the Council was it suggested that the Grievance Committee look into these activities? A. I don't know particularly about that.

Q. Doctor, I will read from Exhibit 770, which comprises minutes of the meeting of the Council of the Multnomah County Medical Society for March 3rd, 1941, at which you were listed as being present:

"There was a discussion concerning the actvities of certain members in offering a plan of prepaid medical service to certain employee groups. Upon motion duly made and seconded it was voted that the Grievance Committee be instructed to investigate the activities of certain members and association with certain non-members in
2168 offering a plan of prepaid medical service to employee groups and their families in certain industrial plants."

Now, does that refresh your recollection? A. Not particularly.

Q. Doctor, do you hold any animus against these hospital associations? A. I don't think so.

Q. Doctor, have you looked at the prayer for relief in our complaint recently? A. No.

Q. Doctor, I would like to read some of the items and ask whether you would not agree—

Mr. Jaureguy: I object to that as incompetent, irrelavant and immaterial.

Mr. Marcus: —with the objective of these prayers?

Mr. Jaureguy: That is incompetent, irrelevant and immaterial and contrary to the ethics of the American Bar Association, trying to neg tiate with the client instead of the attorney.

Mr. Marcus: On that last statement I think you ought to press charges.

Mr. Jaureguy: I will not promise not to.

Mr. Marcus: I think you ought to.

The Court: I will reserve a ruling. You go ahead with your other question. I will reserve ruling on that. I want to think about it.

2169 Mr. Marcus:

Q. Now Doctor, as I understand it, you are a participating member of the OPS? A. That is right.

Q. And you do accept their treatment requisitions, do you not? A. Accept what?

Q. I believe their tickets are called treatment requisitions. A. Yes.

Q. But you don't accept those of the hospital associations? A. I don't bill the hospital associations.

Mr. Marcus: Your Honor, the only other questions I would want to ask would be with respect to the complaint.

The Court: Is that all? You are through?

Mr. Marcus: Yes, except we are waiting for the ruling of your Honor.

The Court: You might have to wait quite a while. Go ahead, Mr. Jaureguy. Weren't you through otherwise?

Mr. Marcus: Yes, your Honor, but before we get through with the witness I will want to be heard on that matter.

The Court: I will hear you now.

Mr. Marcus: I only want to be heard on this question of the propriety of asking this witness whether he agrees with some of the prayers for relief in the complaint.

The Court: Go ahead.

Mr. Marcus: I would ask your Honor to make a
2170 ruling on that.

The Court: I thought you wanted to make an argument.

Mr. Marcus: No, I am not interested in arguing it. I mean I think it is so clearly proper that if I am mistaken I will let your Honor tell me and I won't even argue, because it is just a case of differing views. I don't think I am mistaken, but I think there should be a ruling so that this witness will know that he is either free to leave here entirely or that he might possibly have to come back.

The Court: Don't you worry about that. That is my worry. I will take care of that. You haven't any other questions to ask him?

Mr Marcus: No, your Honor.

The Court: Do you have any more, Mr. Jaureguy?

Mr. Jaureguy: Yes, your Honor.

The Court: Go ahead.

Redirect Examination

By Mr. Jaureguy:

Q. I am not sure I understand, Doctor, the nature of the problem that confronted the Multnomah Medical Service Bureau and the OPS that led them to enter into these negotiations with the hospitals. A. Well, the Medical Society had on more than one occasion on record indicated to the Medical Service Bureau that it was the feel-

ing of the Society that the Medical Service Bureau
2171 should get away from selling hospital coverage; that it was not the province of the Medical Service Bureau to go out and sell or peddle hospital coverage, any more than it is for someone else to go out, some layman to go out and sell my services. That is the reason I don't work for these lay hospital associations. It seems to me they advertise to their patrons that they may select any physician in town. Possibly they qualify that by saying any cooperating physician, but they don't state to those people what a cooperating physician is, and many of their clients come to me because they are led to believe that they can accept or pick practically any physician. The Medical Service Bureau in its effort to get away from selling hospital coverage naturally had to negotiate with the Blue Cross and was selling hospital coverage. And to try to get some plan by which both services could be sold we would want the overhead all in one package.

Q. Why was it necessary to sell it in one package? A. Well, very definitely every time we tried to get to the place where we were selling two services separately, we were faced with two overheads. We were faced with the overhead of the Northwest Plan and the overhead of our plan, whereas our competitors had a very distinct advantage because they could go at any time and buy hospitalization without the Blue Cross overhead. They bought hospitalization for what it sold for, just as John Smith or any individual buys it. But when you buy hos-
2172 pitalization from the Blue Cross you pay probably 10 per cent overhead in addition to the hospital cost, so we were immediately licked. As long as the commercial hospital associations could sell hospitalization and medicine, and we, the Medical Service Bureau, had to sell medicine and hospitalization in two separate packages, we paid two overheads. Our costs may have been at least 10 per cent more, and we were immediately licked in the competitive field.

Mr. Jauregüy: That is all.

Mr. Marcus: That is all, unless your Honor—

The Court: Doctor, you expect as far as you know to be in the city?

A. Yes, sir.

The Court: You will be here next week?

A. Well, I will be available, I would say, Monday and Tuesday, if I can put it that way.

The Court: No, I don't want to put it that way. You let me or my Clerk know if you have plans to go out of town at least a day before. You can do that, can't you?

A. Yes, sir.

The Court: All right. Thank you.

(Witness excused.)

(Noon recess.)

2173 Court reconvened at 2:00 o'clock P. M., pursuant to recess.

The Court: Proceed.

Mr. Jaureguy: Call another witness, your Honor?

The Court: Yes.

Mr. Jaureguy: Dr. Leitch.

Dr. Gordon B. Leitch, one of the defendants herein, produced as a witness on behalf of Defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please. A. Dr. Gordon Leitch.

Q. Where do you live? A. Portland.

Q. How long have you lived in Portland? A. I graduated from the University of Oregon Medical School, and then I went with the Rockefeller Foundation in the Orient and after my postgraduate work I returned to Portland and have been here ever since, since about 1929, approximately.

Q. You are one of the defendants in this case?

2174 A. I am.

Q. Are you a member of any medical society? A. Yes. I am a member of the Multnomah County Medical Society, the Oregon State Medical Society and the American Medical Association.

Q. How long have belonged to those? A. I joined the Multnomah County Medical Society I believe in about 1942 and, coincidentally, the Oregon State and AMA about the same time.

Q. Have you held any offices either in the Multnomah County Society or the State Society or the AMA? A.

No offices as such. I have held a number of committee assignments and some committee chairmanships.

Q. Doctor, during the course of your practice have you had occasion to take care of patients who are members of commercial hospital associations? A. Yes.

Q. Do you know what the expression "taking tickets" means? A. Yes.

Q. Do you take tickets of those associations? A. No. I never have.

Q. I wonder if you could give us your reasons for not taking them. A. Well, it goes back a long way. When I first started to practice medicine, I had certain ideas in mind as to the way I wanted to practice medicine, and when I located in Portland I was aware of the Hos-
2175 pital Association Act, the fact that they had a number of organizations doing business in this state under that Act, and I took the trouble, out of sheer curiosity and to know my facts, to read the law under which those operated and, much to my amazement, I concluded that they were, in effect, corporations practicing medicine, and I saw no reason why I, as an individual practitioner of medicine, should do anything at all to support the corporation which was competing with me, and a corporation of course which was not a colleague, and I have not consciously at any time ever taken any of their tickets.

I think perhaps in the first year or two of my practice I might have possibly seen one case for the National Hospital Association in which I did take a ticket, billed the Association and received a check from them; but, as far as I recall,—this is so vague I can't remember definitely—that is the only instance where I ever accepted a hospital association ticket, and it was at or following that time that I read this Act to find out what it was all about. I do, however, see their patients.

Q. Were you influenced in that regard by any medical society? A. I was not.

Q. You say you do see their patients? A. Yes.

Q. How do you handle them? A. Strictly as private patients.

2176 Do you give them itemized statements? A. I give them itemized statements, yes.

Q. Have you held any offices in the Oregon Physicians' Service? A. Yes, I have been a trustee and a director of Oregon Physicians' Service, and I am at the present time.

Q. How long has that continued? A. I think that I first became a trustee of Oregon Physicians' Service in the

spring of 1944. The date is a matter of record. I have been a trustee continually since that time to and including the present.

Q. You say you are also a director? A. Yes. The directors serve—

Q. How long have you been a director? A. —a term of one year, and they are subject to re-election or election annually, and I have been on the directorate since the time I became a trustee.

Q. So you have been there since 1944? A. Yes, sir.

Q. Have you attended directors' meetings and trustees' meetings? A. Yes.

Q. At any time in any of those meetings has any proposal ever been made to try to induce doctors not to accept tickets of a hospital association? A. It has never been a matter of discussion.

Q. Therefore, no proposal has been made? A. 2177 No proposal has been made to my knowledge.

Q. At no time during the time you have been connected with it? A. That is correct.

Q. Do you have any position with respect to Northwest Medicine? A. Yes. I believe they call me the editor of the Oregon section of Northwest Medicine, but that is a title to get a fellow to do some work.

I once made the mistake of going out of a meeting and when I came back in I found I had been handed this job. I believe that was about April or May or something like that of 1944.

Q. Who handed it to you? A. The State Council, as far as I know.

Q. You mean the Medical Society did? A. Yes. They said, "We want you to look after it."

Q. Or was it the Board of Trustees of Northwest Medicine? A. Well, I don't know how it came about. It was all a surprise to me.

Q. You have written articles that have appeared in Northwest Medicine? A. Yes, and I have urged other doctors to write articles and anybody that cared to express themselves was welcome to contribute.

Q. In doing so has it been your thought you were expressing the views of any medical society?

Mr. Marcus: I object to that, your Honor, on the ground that the answer would be irrelevant.

2178 The Court: He may answer.

(Question read.)

A. Definitely not. If there had been any strings attached to the job in that respect, I would not have been interested in it.

Mr. Jaureguy:

Q. What were you endeavoring to express? A. Strictly my own opinions.

Q. Has either the Council of Oregon State Medical Society or of any county society ever asked you to express their views? A. No. Let me qualify that statement this way: There was a chairman of a committee who contacted me and asked me if I would make a statement in the Northwest Medicine on their behalf. He was Col. Mount, who was in charge of the placement of returning doctors following the war, and he discussed with me a statement, and he wrote it out, and I inserted that statement at the request of the Veterans' Placement Committee of the State Council, and so stated when it appeared in Northwest Medicine.

Q. Has any officer of any society or the trustees of Northwest Medicine ever indicated to you that it was intended you should express the society's views rather than your own? A. No, or I would have told them to go and express their own views.

Q. The views, then, that have appeared in these articles were your own views? A. That is correct. I did make some inquiries when this thing came to me out of a
2179 clear sky as to what the situation was, and the thing that seemed to distress them was the financial difficulties of Northwest Medicine, and the question of how well it was read by the profession, and, while there were no instructions given and none received, I concluded that what they wanted to do was to have it read, and how, it didn't concern them, so I proceeded to develop what you might call my own policy to get Northwest Medicine, at least the Oregon section, read.

Q. Has the reaction that has come to you upon writing these articles given you any indication as to whether you were uniformly expressing the views of the members of the Society? A. I would say that I have not expressed uniformly the views. I have been jumped on and I have been praised and I have had the telephone hung up on my ear. I have had varieties of reactions, and that of course is to be expected, because when you make a man sore enough to call you up about something you know he has read it. That was all right with me. The main object I

had at that time was to make them think. I did not care what conclusion they reached. If they read the thing enough to get stirred up by condemnation, that is all right with me. I considered either way I am doing the job.

The Court: Is that a paid job? A. Well, there is an honorarium attached to it for expenses.

Mr. Jaureguy:

Q. How much is that honorarium? A. I think it is about thirty-five or something like that.

2180 Q. You said you practiced here for several years before you became a member of the Medical Society? A. That is correct.

Q. Did that in any way, as far as you could see, interfere with your practice of medicine, the fact that you were not a member? A. As far as I could tell, it made no difference whatsoever.

Mr. Jaureguy: You may take the witness.

Mr. Marcus:

Q. You have been chosen to be the scapegoat in this case?

Mr. Jaureguy: Chosen by whom? Chosen by the Government?

Mr. Marcus:

Q. It is true, isn't it, as you have just testified, as far as Northwest Medicine is concerned, you just express your own views? A. That is correct.

Q. Has anybody else been the editor of Northwest Medicine for the Oregon section since you got that job? A. Not that I know of.

Q. Now, Doctor,—

The Court: Do you want to ask him the formal questions before the cross examination starts, whether he is a conspirator and this and that?

Mr. Jaureguy: I wonder if I could ask those formal questions.

The Court: Yes.

Mr. Jaureguy:

Q. The Complaint charges that a conspiracy was

2181 organized about the 1st of January, 1936, and that in 1942 you joined that conspiracy, which was the

same time I think you said that you joined the Medical Society. Did you have any feeling that at that time you were joining a conspiracy of any kind? A. No, I didn't.

Q. Or since then have you ever felt you have been a member of a conspiracy to destroy the commercial hospital associations? A. Definitely not.

Q. What is your view as to whether it would be a good thing for the medical profession to have the commercial hospital associations destroyed, put out of business? A. Well, as far as commercial hospital associations are concerned, doing business, the only feelings I have on the subject, as I have already expressed, are that they are corporations practicing medicine and, I, as an individual doctor, do not like that. As far as trying to put them out of business, I hope I am not that foolish.

As far as my relationship with the Oregon Physicians' Service is concerned, there is a duty there as a director in a competitive field to recognize their existence, and naturally we are going to compete with them the best we can. In that field all I ask is that competition be fair. I think competition is good.

2182 Q. Have you, either individually or in conjunction with anybody else, ever attempted to prevent any doctor from taking tickets of a commercial hospital association? A. No, I have not.

Q. Have you, either individually or in conjunction with anyone else, ever attempted to keep any doctor off of the staff of a hospital on account of his association in any way with commercial hospital associations? A. No.

Q. Or have you ever attempted to keep any patient out of any hospital on account of the fact that the patient was a member of a hospital association? A. No.

Q. Have you alone or in conjunction with others ever attempted to induce doctors not to consult with doctors who are connected with commercial hospital associations? A. No, I have not.

Mr. Jaureguy: All right.

Cross Examination

By Mr. Marcus:

Q. Isn't it true, as a matter of fact, you have gone around the state trying to get doctors not to cooperate with these hospital associations? A. That is not true, Mr. Marcus. It is true I have gone around the state. I was requested by

Dr. McLean, who was or is a defendant here, to
2183 accompany him on one trip. I was also requested by Dr. Spalding, when he was President of the State Medical Society, to accompany him on a trip around the state. I made a part of the trip with them. I did so in my capacity as a member of the Public Policy Committee of the Oregon State Medical Society, to report on legislation, and as a director of OPS, to state our problems to them.

I did not at any time tell them or try to tell them what they should do. If anybody would listen to me, I told them what I did; and if they chose to go along with me, that was entirely up to them. I have never checked to find out whether anybody followed my suggestions or advice or whether they just listened to me. I don't know.

Q. Isn't it true that whenever you came in contact with doctors, or very frequently when you came in contact with doctors, you have suggested to them that they not deal with hospital associations, commercial hospital associations? A. No, I have stated my views, stated what my relations with them were, merely as a matter of my own opinion.

Q. Isn't it true that on other occasions, including when you wrote for Northwest Medicine, you have tried to persuade doctors not to associate with these commercial hospital associations? A. No, my speaking to them and my writings in Northwest Medicine were intended to make them think of these issues. What decision they would reach would be their own. I am not foolish enough
2184 to try to talk to a group of individuals or individualists like I know doctors to be, and try to mold their opinions. They make up their own opinions.

Q. You have been foolish enough to spread all sorts of propaganda in Northwest Medicine— A. I wouldn't call it propaganda.

Q. Just let me finish. Wait until I finish the question.

(Question read.)

Q. —against these hospital associations? A. No, I have stated my opinion, and I have published it frequently. I have spoken to anybody that wanted to hear it. I have never gone out of my way to make assertions. If somebody would ask me a question, I would open up on them and tell them what I thought.

Q. You are accustomed to speaking your opinion on almost every occasion, aren't you? A. Some people would think so, perhaps.

Q. In fact, you have attended many meetings of the

Council, even though you were not a member, and got up and made remarks and discussed matters? A. No, I have not, except as a member of a committee to make a report, or to see what was going on there so it could be written up in Northwest Medicine.

Q. Are you willing to abide by that statement? A. Yes.

2185 I never attended a Council meeting, Council meetings, before I became a member of the Public Policy Committee, to my knowledge. I might have appeared as an individual doctor by request, or something like that, but I don't recall when it was.

Q. You may have appeared as an individual doctor? A. Yes, but I don't recall when that was.

2186 Mr. Marcus:

Q. Now, Doctor, you say that you came to the conclusion not to deal with these hospital associations after you examined the hospital association law. Are you a lawyer? A. No.

Q. What were you at that time? A. Just a plain ordinary doctor.

Q. And that was your construction, is that right? A. That is my construction, because I will tell you—let me tell you how I arrived at that. I noticed an interesting thing. If you substituted the word "lawyer" for "doctor" where it appeared in the Act and you submitted the words "legal services" or "courtroom appearances" for "hospitals" you just about had the same thing applying to lawyers. And I know that you fellows are pretty allergic to corporations practicing law and I concluded since we are a profession, why, this was the same thing in our profession.

Q. And I suppose since you have gone into the subject you know that it is unlawful, I suppose, even in Oregon, for corporations to practice law? A. Well, I don't know. I never got that far. But in my opinion these fellows were corporations and I just didn't want to have anything to do with it.

Q. And you thought— A. I don't think the law has ever been tested in Oregon, just as a matter of passing interest. I'd like to know.

2187 Q. Apparently you haven't examined the law. A. I read the Act.

Q. You came to the conclusion, then, Doctor, that it was unlawful for corporations to practice medicine? A. I don't know how to answer that question, Mr. Marcus. A corporation, not a colleague—let me put it that way. I am

aware Oregon Physicians' Service is a corporation incorporated under this same law. It does not have the objections that I held against the commercial associations, and still do, because that was a group of colleagues joining themselves together.

Q. That is another reason? A. No. That had nothing to do with it. I didn't accept tickets before OPS was ever formed.

Q. But just before you said you examined the hospital association law yourself and after a good deal of thinking about it you concluded that it was the same as a corporation practicing medicine and that was a bad thing, you didn't want to have anything to do with those hospital associations, isn't that so? A. Well, I personally didn't want to have anything to do with them, that is correct.

Q. Now, Doctor, isn't it true that you were a member of the Multnomah Industrial Health Association? A. I believe at one time I was, but I soon resigned from that and didn't see any of their patients. That was in the early days of prepaid medicine on the part of the medical
2188 profession in Oregon and it was evolutionary and experimental, and for personal reasons that have no bearing on this case I think I resigned very early in the game.

Q. You didn't think that was a corporation practicing medicine? A. Well, that was a group of doctors combined to sell their own services, a joint venture. I don't know what the legal status of the thing would be.

Q. Doctor, I believe you said you were on the committee on public policy and legislation of the Multnomah County Medical Society. A. No, I didn't say Multnomah. I don't think I have ever been on their committee. I might have been one or two years. The appointment to which I referred was that committee of the Oregon State Medical Society.

Q. You are not prepared to say you weren't a member of that committee? A. I believe there was one year they had a duplicate membership and a certain number of men on the State Committee were also members of the Multnomah, or vice versa, I have forgotten which, but the Multnomah committee to my knowledge, as I recall, never functioned.

Q. What year was that, do you recall? A. I can't recall that year. It is a matter of record.

Q. It might have been 1947? A. I can't recall. It is a matter of record. Whatever your record shows there
2189 would be the year.

Q. Well, that is not so far away that you couldn't

remember it, is it, Doctor? I ask you look at the second page, please, of Exhibit 201 to see whether that refreshes your recollection. A. Yes; I guess they had my name on that committee, but I never functioned on it because—

Q. You did function—

Mr. Jaureguy: Don't interrupt.

Mr. Marcus:

Q. You did function at that time on a similar committee for the State Society, isn't that so? A. There was one year that I was not on the public policy committee of the State Society. It might have been that year.

Q. Well, when you were a member of that committee do you recall at a time when a bill was proposed in the State Legislature which would have made it unlawful for the doctors to conspire to put these hospital associations out of business— A. Let's see, that was the forty, I think the 1947 session of the legislature. I do not believe that I was a member of the State Society public policy committee that year. I don't, I can't be certain—your record will show. I think that is the year I am speaking of.

Q. Well, you took some part, didn't you, in opposing that bill? A. I was asked to go down there and appear at a hearing and I did that.

Q. You were asked by the State Society, is that so?

2190 A. Yes.

Q. And then you wrote it up in the Northwest Medicine, didn't you? A. Yes, some months later.

Q. Doctor, were you ever on the committee on publicity of the Multnomah County Medical Society? A. I think I was, if you are referring to the committee on public relations. Yes, I was on that. That is the committee that has the responsibility for the publication of the Multnomah County Bulletin, and I was a nominal member of that committee, I think one or possibly two years. Just when, I don't recall.

Q. And the record will show? A. The record will show.

Q. You have no independent recollection? A. No. I was, you might say, in an advisory capacity and I don't recall any activity on that committee.

Q. Doctor, these various positions you have taken with respect to hospital associations, have you ever discussed them with the other doctors of the medical societies or do you always keep them to yourself? A. Well, I think probably I keep them pretty well to myself except that this

whole subject for a period of years has been a matter of conversation between doctors wherever they meet, in operating rooms, in hospitals, various phases of it come up and I probably discussed it very freely on occasions
2191 like that.

Q. And you have discussed it with the defendants in this case, haven't you? A. Yes.

Q. And you have discussed it at meetings of the Society, haven't you? A. I have stated my views, if you call that discussion, yes. I have differed with people and I have sometimes agreed with them.

Q. You stated that you were along with Dr. McLean on a tour of the various county medical societies sometime during this period. A. Yes. Dr. McLean asked me to go with him. At that time there was some question of the University of Oregon Medical School building a hospital, and there was some controversy in the state among the doctors as to whether it should be approved or not. It was a widely controversial subject, and I held strong views on it which I published in Northwest Medicine, and Dr. McLean had some opposite views, and we went around and reported, you might say, the pros and the cons of this controversy to the doctors so that they could be thinking about it.

The reason I recall that is because one day when Dr. McLean and I were driving between places he said, "I am getting awfully tired of listening to you. Why don't you give my speech tonight and I will give yours." He took my arguments and I took his. The idea was to get the
2192 opinions to the doctors. We held no briefs. But that night he gave my spiel and I gave his.

Q. But that wasn't the only topic discussed? A. That was the purpose of the tour, as I recall.

Q. I have asked you another question. I asked if that was the only topic discussed. A. Oh, no. Whenever doctors get together they discuss many topics. I am quite sure other topics must have been discussed. What they were, I don't recall.

Q. Now, Doctor, you stated you have been a trustee and Director of OPS. A. Yes

Q. Is OPS part of the AMCP? A. Yes. OPS—

Q. And will you explain to us what that organization is? A. The AMCP is a voluntary organization, Associated Medical Care Plans, Inc. When it started out it was to be a coordinating agency and exchange of information agency for all the prepaid plans who cared to join. We joined, I think.

Q. Let me correct you, if I may. That was doctor-sponsored plans? A. Doctor-sponsored plans. And I believe some Blue Cross sponsored plans are in it. I am not too familiar what the general membership is, but it was the
doctor-sponsored or medical society sponsored or
2193 approved plans. It might have been some of these
plans were owned or operated by Blue Cross, and those plans were eligible for membership. Oregon Physicians' Service, as I recall, was a charter member of that organization, and although we have had some doubts and misgivings since that time as to how that organization was headed, I believe we are still members of it.

Q. And that organization has been affiliated with the American Medical Association, has it not? A. I don't know what you mean by "affiliate" there. If I can qualify that perhaps I can answer your question.

Q. Go ahead. A. I think when it was formed it was formed with at least the blessing of the American Medical Association as an outgrowth of the activities on the council on Medical Service. Some months or years later I believe that the AMA washed its hands of the thing entirely because it was headed in a different direction than it started, so I think the relationship there is probably friendly, but I wouldn't say it is affiliated.

Q. Well, you know as a matter of fact, don't you, Doctor, that the Council on Medical Service of AMA has always kept its hands in AMCP? A. I think at one time they had a certain number of members of the AMCP Commission that they appointed. I think that was changed a few years ago.
Actually AMCP is an independent legal corporation.
2194 Q. You seem to be fond of those terms "corporation", "legal corporation". You make a distinction between legal and illegal? A. I want to make the point it is not a part of the American Medical Association organization as I understand it.

Q. Now, Doctor, while you were with OPS and have been with OPS, OPS—well, let me ask you this: About how many salesmen does OPS have? A. I can't answer that question, Mr. Marcus. That is a detail of administration that I have never bothered to find out about. I can find out if you wish to know.

Q. Well, would you say more than five? A. I think we probably have more than five.

Q. No question of solicitation on the part of OPS, is there? A. Yes.

Q. That is, they do solicit? A. They solicit the same as all the other people that come under this Act.

Q. And they use the newspapers, the radio, streetcar signs and the like, don't they, for that purpose? A. Yes, they advertise. They use radio and streetcar signs and, yes, they do, but whether that is solicitation or merely stating the case to the public I wouldn't know, but it does present the types of contracts that are available and tells them where they can get more information, so I
2195 suppose it would be classified as a form of solicitation.

Q. Doctor, during this period you have been associated with OPS there has been a continuation of the negotiations I referred to on cross examining Dr. Besson this morning—I believe you were in the court at that time, were you not? A. Yes.

Q. And is that so? A. I was rather interested in your examination of Dr. Besson this morning on this relationship with Blue Cross, because it has been something that has continued in here, but I think that in order to understand that it should be presented in a little different fashion. I don't recall when Blue Cross was organized in this State. I think it was before the time I became a member of Oregon Physicians' Service Board. But since that time Blue Cross has been active in the prepaid field in Oregon and has at various times approached physicians as such or Oregon Physicians' Service as such in an effort to have Oregon Physicians' Service abandon the hospitalization end of their contract and turn it over to the Blue Cross organization.

Q. Doctor, don't you think that has been a two-way proposition? A. It has not been a two-way proposition to my knowledge. I have taken part in some of those negotiations and I might say it has always boiled down to that one thing. Now, let me qualify that in a little background, because if you take these things at face
2196 value without the context, why, you sometimes get the wrong idea.

Q. You mean if you forget about the documents? A. No. Lets put it this way: The States of Oregon and Washington are the only two—possibly the State of Idaho—wherein the history of the development of this prepaid movement the movement orginally offered from the beginning a one-package program combining doctor services and hospitalizations. When the Blue Cross—

Q. Are you talking about doctor-sponsored plans? A. No, I am not talking about doctor-sponsored plans there. I am talking abou them all. Historically the prepaid movement in Oregon and Washington developed along

that one-package line. Historically in the rest of the nation, at least the very large part of it, the doctors were not engaged in selling any type of prepaid medical care, nor were there any other groups which were comparable to the commercial hospital associations, and into that so-called virgin field came the Blue Cross organization offering hospitalization, and that is a matter of record what happened.

Now, early in their efforts to sell prepaid hospitalization they discovered that many people—

Q. Well, Doctor, were you an employee of Blue Cross? A. No.

Q. Well, then I am going to have to object to
2197 your making any such statements unless you can tell me that that is of your personal knowledge. A. Well, it is my personal knowledge to this extent, that I have discussed this with Blue Cross executives and people who are selling the Blue Cross program. I took no personal part in that and I can't tell that, but I did discuss it with Dr. Louis Reed of the U. S. Public Health Service who made a very factual report on these things. I discussed it with him on one or two occasions.

Q. You spent a lot of time— A. No.

Q. —analyzing prepaid medical care fields, haven't you, Doctor? A. I have studied it, yes, because I felt as a Director of OPS I had to know what was going on, and it was from—

Q. Well, you made a study before that. You made a study way back of the hospital association law, didn't you? A. That is correct. That is my only knowledge of that conclusion. Now, if you would like me to continue I will, but if it is not admissible I will stop.

Q. Well, go ahead. A. They discovered, the Blue Cross people discovered that they did not get the public reception that they anticipated to a contract offering protection against hospitalization only, and so they developed elsewhere medical programs. They persuaded doctors
2198 to form these prepaid organizations, or where the doctors couldn't legally or were unwilling or unable for a number of reasons to do so then they instituted what they called their medical benefits. They then were able to offer the public a one-package program.

Now, when they came to Oregon there was already a one-package program in the field, and the Blue Cross operations in the Northwest—

Q. You say there was a one-package program in the field. Are you talking about the commercial hospital associations? A. They were offering a one-package program, that is correct. And these doctor service bureaus at various places in the State were offering a one-package program, and so the Blue Cross program in Oregon never made as rapid strides as it did elsewhere in the nation, and it was my impression—and this is strictly my own opinion—that the Blue Cross people here were under some persuasion or compulsion or something to try to bring their program in line with the national program of the Blue Cross, and it was in connection with that desire—and again I say this is my personal opinion—that these negotiations were always started, they came from Blue Cross to OPS or to doctors, and then the discussions—

Q. And you took it up from there? A. Pardon?

Q. The OPS took it up from there? A. To my
2199 knowledge OPS never initiated those conversations.

Q. They participated in them, didn't they? A. That is correct.

Q. And, the first time it was broached to OPS, OPS didn't say, "No, we won't have anything to do with it", did it? A. That I can't answer. I don't think we have ever said we wouldn't have anything to do with it. I think we felt we had to listen in case of a new idea they might have.

Q. As a matter of fact, OPS wanted to get into this arrangement and the only reason it broke up is that you could not get together on details, isn't that so? A. That is not correct, Mr. Marcus. We were never concerned with releasing our hospitalization that I know, since my time.

Mr. Marcus: I would like to have these marked.

(Photostatic copy of letter by Good Samaritan Hospital to E. B. McNaughton, dated April 13, 1946, was marked for identification Plaintiff's Exhibit No. 2073;

(Photostatic copy of letter by Good Samaritan Hospital to Dr. D. R. Ross, dated April 16, 1946, was marked for identification Plantiff's Exhibit No. 2074;

(Photostatic copy of letter by Dr. D. R. Ross to Good Samaritan Hospital, dated April 24, 1946, was marked for identification Plaintiff's Exhibit No. 2075;

2200 (Photostatic copy of letter by Good Samaritan Hospital to Dr. D. R. Ross, dated May 1, 1946, was marked for identification Plaintiff's Exhibit No. 2076;

and

(Minutes of meeting of Executive Committee of Northwest Hospital Service Plan on January 22, 1947, was marked for identification Plaintiff's Exhibit No. 2077.)

Mr. Marcus:

Q. Doctor, you are acquainted with Dr. D. R. Ross? A. Yes.

Q. What position did he hold with OPS? A. Dr. Ross has been President of OPS for several terms.

Q. Doctor, during what period of time to your knowledge have these negotiations gone on as far as OPS has been concerned? A. Well, now, let me qualify that answer. To my knowledge there have been three sets of negotiations. There may have been four. I have heard reports of one or two before that, so there might have been five. The first negotiations that I recall—

Q. We are talking about OPS now. A. Well, I thought you meant negotiations involving Blue Cross.

Q. Yes, but with OPS. You stated you came to OPS in 1944, did you not? A. Yes. There were some negotiations I think in the fall of '44—it might have been
2201 in the spring of '45. Whether those were negotiations directly with OPS or whether they were with the Medical Society I don't recall. In 1945 there were negotiations directly between Blue Cross and Oregon Physicians' Service. I think that is the year. On one of those occasions—I have forgotten whether it was '44 or '45—I participated in those negotiations representing OPS. Then after that in 1946 there was another set of negotiations, but it did not involve OPS directly.

Now, I might say by way of explanation, Mr. Marcus, that after these negotiations reached a certain point usually the OPS was called in on one side and Blue Cross on the other to supply the technical information, or things like that.

Q. And to submit counterproposals, is that not so? A. Yes. Proposals were drafted. I guess there was probably half a dozen of them all told at various times.

Q. But you say that according to your recollection by 1946 the proposals didn't involve OPS directly? A. The committee in 1946, as I recall, consisted of a member of the Oregon State Medical Society, one doctor from Salem, and one doctor from Oregon City, who was not a member of Oregon Physicians' Service. I think that is the 1946

negotiations. I can't be certain about that, but that is the way I recall it now.

Q. Well, you may be mistaken about that? A. I
2202 could be, yes.

Q. I show you Exhibits 2074 marked for identification and 2073 marked for identification and just ask you to glance at that and see whether that refreshes your recollection as to whether negotiations were going on in 1946 involving OPS. I am not sure whether you personally are familiar with those letters. A. No, I am not personally familiar with these letters. I do recall that Dr. Ross mentioned something to me about this. I believe the overtures were made directly to Dr. Ross and he asked me at some subsequent meeting—whether it was a Board meeting or just a personal contact—what I thought of it, and I said I thought it was a waste of time.

Q. Well, Doctor, you would say, would you not, that negotiations continued either consistently or intermittently from the time you became associated with OPS until about 1947? A. I think there were some negotiations of some sort before I became a member of OPS.

Q. Well, I am just taking when you were there. A. Then there were one or two during that time, and my recollection of when they terminated was in 1946, I believe. The reason I recall that is because much to my surprise they asked me to go and listen to one of these meetings and I had to postpone a flight to attend the American Medical Association at San Francisco which I had made for that day and it broke up and I went the next day. That is the only reason I remember that. I think that is 1946. That is the last year the AMA met in San Francisco.

2203 Q. Am I to understand or am I not to understand you were involved in all of these negotiations? A. No, I was not involved in all of them.

Q. So you don't actually know whether there were negotiations going on at that time? A. I think there was some informal conversations that may have been going on, in a committee or two, in 1944, which I had some knowledge of. I do not recall that I had any official capacity, representing OPS; in 1945 I think that that year I was one of the official representatives of OPS; in 1946, which was the next year, I had nothing to do with the negotiations, except when they had progressed up to a certain point I was invited or issued an invitation to sit in on one session which happened to be the final session, and I was able to listen, which I did.

Q. You do not actually know, do you, whether or not negotiations continued through 1946? A. No, I wasn't—

Q. Is the answer Yes or No? Do you know or don't you know? A. I attended that one meeting, so there must have been some kind of negotiations in 1936, but what preceded that—

Q. But you don't know they extended up to 1947. A. Pardon?

Q. You don't know they extended up to 1947? A. No, I don't know that.

Q. You have been accused of making misleading
2204 statements before, have you not, in so far as prepaid medical care plans are concerned? A. Oh, I have been accused of lots of things. I don't know what you have reference to.

Q. Well, were you so accused in 1949 at a meeting involving prepaid medical care plans, in the AMCP meeting? A. Yes, I recall that incident now. It seems the president of that organization, for what reason I don't know, saw fit to relinquish the chair in order to take the floor and make a personal attack upon me, which I replied to at the time. I still don't know what his purpose was, but I certainly do not believe I made any misleading statements, to my knowledge.

Q. Now, Doctor, when you wrote these articles in Northwest Medicine, you had some hope or expectation, did you not, that they might influence the readers? A. I didn't care.

Q. You didn't care what you wrote, is that it? A. I didn't care whether they influenced them or not. If they agreed, that is fine; if the opposed them, that is also fine. I stated that earlier.

Q. Your only purpose was to present one side and hope that they would think, is that so? A. No, it wasn't—there was no compulsion that I could see to state both sides of a controversy, if there were two sides to it. We were merely writing articles to get the attention of the
2205 profession. The profession in Oregon was sufficiently familiar with this situation so that they themselves probably knew the other side, if there was another side.

Q. If there were not two sides to the controversy, there was no necessity for them to think, was there? A. It never does any harm for anybody to think.

Q. You have represented the Society on a number of occasions, have you not, with outside organizations connected in one way or another with prepaid medical care? A. Yes.

Q. Is there some sort of a Western Conference? A. Yes, there is a Western Conference, which is a forum organization, which meets occasionally, no definite time or place, to discuss some of the problems of prepaid care which are peculiar to the Western States.

Q. Could you tell us the full name of that organization? A. I don't recall it exactly. I believe it is the Western Conference of Medical Service Plans or something of that sort.

Q. You have represented OPS at such meetings at times, have you not? A. I have occasionally. Other men have represented it at other times.

Q. Doctor, you have been a member of one of the supervisory committees of OPS? A. Not to my knowledge.

I had the privilege, as a director, of sitting in with
2206 supervisory committee, but I don't recall that I ever have been a member of any supervisory committee. If I have been, I have not attended meetings. I have appeared at a number of supervisory committee meetings, yes.

Q. I suppose you are familiar, then, with the fact that at those meetings complaints of doctors have been taken up, as well as the question of whether or not the fees asked for were the proper fees? A. That is one of the functions of the supervisory committee.

Q. Whose suggestion was it that articles in Northwest Medicine, the Oregon section, be signed? A. Well, that was the suggestion of the State Council, after an article appeared there in regard to this medical school and hospital controversy. That was in the early days of my stewardship, as you might say, and it was a pretty hot article and stirred up a lot of controversy among our profession, and we felt that it was better after that to have the articles signed, where they were of a violent controversial nature, of that type.

Q. I read from Exhibit 367, proceedings of the Council of the Multnomah County Medical Society, October 6, 1945, just one paragraph, to see whether that refreshes your recollection or not as to who proposed that the articles be signed:

"Dr. Leitch, editor of the Oregon section of Northwest Medicine, suggested it might be well to incorporate in
the Oregon section a statement to the effect that
2207 articles appearing there do not necessarily represent the opinions of the Oregon State Medical Soci-

ety, and also that all articles which are expressions of personal opinion be signed,"

Was that the result of some more legal work on your part? A. No, it was the result of just talking the thing over.

Q. Are you a lawyer? A. I was perfectly willing that that be done.

(Recess.)

2208 Mr. Marcus:

Q. Doctor, you have represented the Society at meetings of the State Medical Society Presidents, have you not? A. I don't recall that I have. It seems to me that one time I was designated to represent the President at a meeting, if that is the one you refer to.

Q. You didn't go? A. I did.

Q. Then you did represent them at that meeting? A. As I recall, that meeting was to be a meeting of presidents or people appointed by the presidents to represent a certain number of societies, or something like that. I attended one such meeting.

Q. What kind of an organization was that, Doctor? A. Well, that was a forum discussion of some of these prepaid plans held in Chicago a number of years ago, I think a year or two ago, if that is the same meeting we are talking about.

Q. Was that under the auspices of the American Medical Association? A. That I can't answer. It might have been under the auspices of the Council on Medical service or it might have been simply a meeting called by the AMA, but not under the AMA sponsorship. They frequently have meetings there in which they loan them their auditorium, but who was responsible for calling the meeting I don't know—or I should say I don't recall.

2209 Q. Maybe this will refresh your recollection. I am reading from the proceedings of the Council of July 10th, 1948, of the Oregon State Medical Society. The exhibit number is No. 386.

"Gordon B. Leitch, whom President James C. Hayes designated to represent the Society at a meeting of State Medical Society presidents and their representatives, called by the Council on Medical Service of the American Medical Association on June 19th in Chicago, reported that the following recommendations were adopted at the meeting."

Does that refresh your recollection? A. Yes, that is the same meeting. That is the same meeting.

Q. Now Doctor, what percentage of OPS meetings would you say you have attended? A. You mean Board meetings, Trustee meetings?

Q. Board meetings. A. Oh, I think I have attended a rather high percentage of them, probably well up.

Q. 90 per cent? A. That I wouldn't know. But I make an effort to attend every one. Sometimes is isn't possible.

Q. How about the Board of Directors?, A. Well, the Board of Trustees meets only once a year normally, unless they are called in specially. The Board of Directors has met approximately once a month.

2210 Q. I see. With respect to the Board of Directors —is that what you were talking about? A. Yes.

Q. Now Doctor, I believe you testified you do not take tickets of the hospital associations; is that right? A. That is correct.

Q. And it is true also, Doctor, that you won't even fill their forms? A. I won't fill their forms. I haven't, and I will tell you why. They, as I pointed out in my testimony earlier, are a competitor of mine, and an unnecessary third party coming into the relationship between the patient and myself, and I don't feel that I am under any obligation to complete their form. I do give the patient an itemized statement.

Q. Competition does strange things to you, doesn't it? A. Well, after all, they have—let's not get into that.

Q. Now Doctor, I think you have testified on direct that you never did anything yourself or participated with anyone in trying to get the hospitals not to treat the hospital associations' subscribers as hospital association patients; is that right? A. That is correct.

Q. Do you recall being present at a meeting in 1944 at which time you did just that? A. I attended several meetings in about that time. I don't know which one you are referring to.

2211 Q. The one you were looking at during the recess over— A. With reference to Exhibit 1881?

Q. Just a moment. Let me finish my question. The one you were looking at during the recess over Dr. Besson's shoulder.

Mr. Jaureguy: That was no minutes of a meeting. That was a document gotten out by the National Hospital Association. I have no objection to the question as long as he properly identifies the document.

Mr. Marcus: That is the document.

A. I was intrigued this morning when you made reference to Mr. Nelson's testimony in referral to this minutes, or whatever it was, and I didn't catch the exhibit number.

Q. You saw enough in looking over Dr. Besson's shoulder— A. Yes, sufficiently to identify the number only. I didn't read it. If you are going to question me about that I should like to read it, if you don't mind, either now or at some subsequent time. I recall that meeting so I don't think that I need to refresh my mind, but I would like to see that before I leave the court because I didn't attempt to read it, even though I was looking over Dr. Besson's shoulder this morning.

Q. Since you say you recall that meeting let me ask you now the question: Did you or did you not advise that the hospitals not accept hospital association patients as such? A. I did not.

Q. You just kept quiet and said nothing? A. Oh,
2212 I spoke my piece, and plenty. But I didn't say that, because I knew we could not look to the hospitals to obviate anything that we were griping about. If I can explain the genesis of that meeting—

Q. I am not asking about the genesis of the meeting. I am just asking what happened at the meeting. A. All right.

Q. That is not the kind of a remark you would make, is it? A. What is that?

Q. That the hospitals should not take hospital association patients? A. I expressed my opinion there, and I have expressed it very liberally to anybody that would listen to me. But is still my personal opinion. Now whether you agree with me or anybody else agrees with me, that is another matter.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: Is that all?

Mr. Marcus: Yes.

Mr. Jaureguy: You mean that you took all that time to tell him what he didn't say at the meeting and will not give him a chance to say what he did say?

Redirect Examination

By Mr. Jaureguy:

2213 Q. What did you say at the meeting? A. Well, in order to get that meeting straight—

Q. Give us the genesis first. A. —I think you should know the circumstances under which it was called. I believe that meeting was held that you have reference to,

or which this memorandum is supposed to be a report of, in January or February. I think the year would be 1944 or '45. It might be '44, I would think. As I recall that, one of these conversations or negotiations, if you want to call them that—whatever it is Mr. Marcus referred to in cross examination—was taking place or had taken place during the fall of that year, of the preceding year—I am not clear what year. And as the usual pattern of those things were, they got nowhere after an agreeable start. The negotiations or conversations broke down or were terminated.

One day I was stopped in the corridor of the hospital by one of the hospital superintendents, and out of a clear sky he began saying something like this: "What is the matter with you people, trying to sell hospitalization? You should leave that to the Blue Cross and confine your services to doctors' services." And so the argument was on.

Well, to make a long story short, the hospital felt, as I pointed out, that we were in a competitive field and we didn't have much choice in the matter; we had to sell this one-package product in order to compete with our competitors. We were attempting to meet something there,

2214 and rather than just saying, "I think it is a waste of time," I agreed to go to this meeting, and I also agreed—I don't know who it was I met; it may have been Harold Blosser—but I stated, "I am perfectly willing to go as an individual doctor. I don't want to have anything to do with any official organization discussing this thing, but I am perfectly willing to talk about it, and I will state my views as I have in the past, but I think you are just wasting your time asking me to be there." So I attended that meeting. And I seem vaguely to recall that Harold Blosser was there and Dr. Besson.

Now we were there as individuals. We didn't represent anybody. As I recall, I wasn't a member of OPS at that time. But we listened to what was said, and it was really an analysis of what was going on in this field, why it was impossible for these two organizations to get together.

Dr. Besson mentioned one phase of this question as a question of double overhead, but there was no question in my mind that it was a waste of time. We had one meeting, and I think there were subsequent meetings, and absolutely nothing came of it. I spoke and stated my personal views, and I think everybody else there stated their personal views, and that was all it amounted to. We just merely exchanged views and let it go at that.

Q. What personal views did you express? A. Well, the personal views that I expressed were that as
2215 long as we were forced to sell a one-package product which included hospitalization because our competitors were selling it, there wasn't much that we could do or should do about it; that if the hospitals wanted to remedy that situation it was something which was up to them, since hospitalization was the thing they were worrying about.

That was about what it amounted to, although I took a great many more words than that to say it.

Q. Now, do you recall that Mr. Nelson, of the Portland Sanitarium & Hospital, notified the OPS about that time that they would not grant credit to members of the OPS when they had hospitalization there? A. I don't know what time that was. However, it did come up before the Board of the OPS at some time that we had been—I can't say without refreshing my memory from the record whether it was before I became a member or afterwards, but it was about the same time that this was going on. There is a story behind that too, but I don't think it is pertinent to the action.

Q. Then did OPS take steps to try to remedy the situation as Mr. Nelson expressed it or as he described it so that they could get credit?

Mr. Marcus: Your Honor, I just want to say, in order to save time, I think we are getting back to that same business that Mr. Nelson started to go into at the request of
2216 Mr. Jaureguy, and your Honor at that time I thought indicated that you thought it was irrelevant, just as I do now.

Mr. Jaureguy: No, it was an entirely different matter that your Honor ruled on.

The Court: You mean that I ruled it out once? Is that your recollection?

Mr. Jaureguy: No, the objection that was sustained was when I asked Mr. Nelson to state the difficulties that they had with commercial hospital associations other than the credit matter, and then I gave my reasons and your Honor sustained the objection. But this is entirely different.

The Witness: It came to the attention of the Board, and we took, as I recall, two-fold action. I believe our manager was instructed or some representative was instructed to interview hospitals to see if some suitable credit arrangement could be worked out; and, failing that, we were prepared to reimburse the patients for the hospital bills.

Mr. Jaureguy:

Q. Now, in connection with Northwest Medicine there was quite a little discussion between you and Mr. Marcus on stating one side of the subject. Did you ever endeavor to have the other side of the subject stated on which you wrote articles? A. Yes,

Q. What did you do? A. I made telephone calls to people who might have the other side who cared
2217 to state their views. I have even written letters to certain doctors inviting them to state the case. That was one of the instances where I had the telephone slammed in my ear. I was inviting a fellow to express his views, and that is what I got for my trouble. But as far as I am concerned, I have no jurisdiction over that thing. It is purely a mechanical thing. Anybody that wants to write in, they are at perfect liberty to have it printed. I exercise no blue pencil or editorial privileges, and the more controversial the matter that appears in there the better paper I would have, because that is what makes it interesting.

Q. I am not sure that I asked you in this question, as to whether or not the Board of Trustees had in response to some action made any statement of policy or anything of that kind with respect to articles that you were to write? A. They never did at any time. I was somewhat mystified by the whole business, and I simply developed it along a pattern which I thought would interest the readers. But as far as any instructions or objections, or anything like that, I have never had them except the one instance I spoke here about of articles being signed where they are controversial.

Mr. Jaureguy: That is all.

Mr. Marcus: That is all.

(Witness excused.)

2218 Mr. Marcus: I have been requested to allow Dr. Leitch to look at this memorandum, which is Plaintiff's Exhibit 1881, and I say I am willing to do so as long as the record shows that he was given that privilege.

Mr. Jaureguy: I did not realize that a party to a case had to get special permission of counsel on the other side to read a document, but that is the purpose for which he is taking it. Put that in the record, too. Mr. Marcus would like to have that returned as soon as you get through reading it.

Dr. Leitch: Very well.

DR. R. W. KULLBERG was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name, please. A. Dr. R. W. Kullberg.

Q. Where do you live? A. Astoria.

Q. You have lived there how long? A. Twenty years.

Q. What is your business or profession? A.
2219 Physician and surgeon.

Q. You have been a physician and surgeon how long? A. Since 1928.

Q. Where did you take your medical education? A. I graduated from the University of Oregon Medical School and had my internship and residency at Augustana Hospital in Chicago.

Q. How long have you practiced in Astoria? A. Since February, 1930.

Q. Did you practice elsewhere before that? A. No.

Q. Do you belong to any medical society? A. I belong to the Clatsop County Medical Society of which I am president at the present time, and the State Medical Society and the American Medical Association.

Q. How long have you belonged to those societies? A. Since the beginning of my practice.

Q. That is since 1930, 1928 or 1930, whatever you said? A. Yes.

Q. Has that membership been continuous? A. Yes.

Q. During the course of your practice, have you had occasion to treat patients who are members of commercial hospital associations? A. Yes, when I first—

2220 Mr. Marcus: Just a minute. I make the same objection with respect to this line of testimony as made with respect to Dr. Durno.

The Court: Overruled. The testimony is admitted, subject to the objection.

Why are you putting on another Clatsop County witness?

Mr. Jaureguy: Your Honor, because the other side emphasized Clatsop quite a little. While we have had three from Clatsop County, two of them were young doctors, in a little different category, I think, than those who have been there some time. I might add that we have another one coming from Clatsop County.

The Court: I didn't understand we intended to have all the doctors in the state to tell what they have been doing.

Mr. Jaureguy: It is only the limitation of time that restrains us from doing it, but I want to say—after all, each one is telling his own reasons. We have given it a lot of thought, your Honor, and we are still a little bit in doubt as to where to draw the line.

The Court: I am not. I think this should be the last Clatsop County witness, unless he is mentioned specially in the Government's case in some way, if he has mistreated a patient or is mentioned specially in any way.

Mr. Jaureguy: That is the case in the case of the other doctor. The other doctor, I might say, that we intend to call is Dr. Straumfjord.

2221 The Court: Is Dr. Straumfjord here?

Mr. Jaureguy: No, he is not here.

The Court: Let's put him on instead of this man, unless he has made a long trip up here just for this purpose.

Mr. Jaureguy: The trip is from Astoria to Portland.

The Court: All right.

Mr. Jaureguy:

Q. The question was whether or not, during the course of your practice, you have treated patients who are members of commercial hospital associations? A. When I first came to Astoria—

Q. You can answer that Yes or No. A. Yes.

Q. I want to ask you whether you know what the expression "taking tickets of hospital associations" means? A. Yes.

Q. Do you take tickets? A. I don't take them now, and have not for several years.

Q. I wonder if you could give us the reasons why you do not take tickets? Is it the result of some medical society activity or is it the result of experience or some other reason? A. It is the result of experience. We were not satisfied with the treatment received from the hospital associations, the commercial associations, and there were so many reports and so many notifications and telephone calls and so on that it actually kept the secretary busy to satisfy these laymen that don't know medical terms any-

2222 way, and we don't pay our stenographer for doing all that work, and we were not satisfied with the service.

Q. Is there anything else, Doctor, about which you were not satisfied? A. We always take care of the patients, and

we found it was to our benefit to let the patient collect the fees just like from any other indemnity insurance company, just like any other indemnity insurance company does; it pays the patient direct and then they pay us.

Q. Did you ever have any difficulty with a commercial hospital association with respect to the amounts that they paid, the fees that they paid? A. Yes, very often.

Q. What were those difficulties? A. They would never pay the entire fee, or they would pay a fee that they would designate that was not according to our fees, our private fees.

Q. How did you determine how to send your bills or the amounts to put on the bills? A. We ourselves—

Q. You mean that is true now, too, then? A. That is true now—What is that?

Q. In the days when you sent the bills directly to the commercial hospital associations, how did you determine what to put on the bill? Was there some schedule
2223 or something? A. They gave us a schedule that we followed.

Q. When you followed that schedule, did they still object to paying? A. Many times.

Q. Did you have any difficulty or any interference with the doctor-patient relationship? Did you have to get authority to do things? A. Very often we had to do that. That is what I mentioned, so many reports to send in, and telephone calls, and so forth, involved in getting authorization to do surgery or other treatments for patients, and it involved a good deal of time and difficulty. It took our time away from the treatment of patients. We were in the practice of medicine and not in the practice of stenography or the business of paper reporting.

Q. What is that? A. I say, we were not in the business of paper reporting.

Q. Do you know about how long it has been since you have taken tickets? A. We took tickets—that is, since we refused to take tickets?

Q. Yes? A. Oh, 1943 or 1944.

Q. You are President of the Society, you say? A. Yes, at the present time.

Q. Has there ever been any action on the part of
2224 any medical society to prevent a doctor from taking tickets if he wants to? A. No, never.

Mr. Marcus: I understand that is confined to his personal experience? I understand he is confining his answer to his own personal experience.

A. Yes.

Mr. Jaureguy:

Q. Have you attended meetings of your own medical society? A. Yes.

Q. Has your attendance been regular? A. Yes.

Q. Has there been any discrimination in your county by the Medical Society against any doctors by reason of the fact that they take tickets? A. There never has been.

Q. Did you know or do you know Guy Haney, who is some official of some labor union? A. Yes.

Q. Did you have a conversation at any time with him regarding hospital associations?

Mr. Marcus: Objection, your Honor, on the ground of hearsay.

The Court: Continue.

Mr. Jaureguy:

Q. Go ahead.

The Court: Go ahead.

2225 A. About 1938 Mr. Haney came to my office and pleaded for—that is, for records. He asked for records on a patient for which the National Hospital Association did not pay the hospital bill, nor our bill, and he took up the cause for the patient and tried to straighten out things so that the patient would have the bill paid, and in the course of the conversation Mr. Haney said, "Well, if you doctors had your own organization you would not have these troubles. Why don't you doctors organize your own organization for the purpose of taking care of this type of prepaid medical care and have your own prepaid medical plan?"

By Mr. Jaureguy:

Q. What was the particular difficulty he was having with National at that time? A. This patient?

Q. Yes. A. Well, the reason probably was that the National Hospital Association thought it was a pre-existing condition, being a carcinoma of the stomach. He had had hospital association coverage for about four years, as I understood it, at the time, and I saw no reason why the National Hospital Association should not pay it. Of course, none of us know how far back a carcinoma starts, but he had no symptoms until the year of the surgery and the year of the treatment; and when he went back to National

he wanted his bill paid and felt that was a new condition that had developed during the time he was covered.

2226 Did that suggestion of the union official have any influence on you and, as far as you know, other doctors, in cooperating with doctor-sponsored plans? A. We were encouraged to establish a competitive organization, yes.

Q. Are you a cooperating physician of OPS? A. Yes.

Q. When you first went to Astoria, did you begin taking patients of these hospital associations? A. It was not very long until a few Industrial Hospital Association patients came in and presented these blue tickets, and I said, "If you want me to take care of you I certainly will be glad to do so," and they would put their tickets on my desk and I would pile them up, and they kept piling up, and more patients kept coming, of that type, of the Industrial Hospital Association's, and I was not on the staff of the Industrial Hospital Association and they felt I had no business taking care of them; but when a patient appeared at my office I felt that they were my patients, and that I should take care of them whether I was going to be paid or not, because I was not working on the basis of profit; I was working on the basis of service to my patient.

This pile of tickets kept piling up, and they then of course began to notice it and consequently they wanted me on the staff of the Industrial Hospital Association, these men that were concerned.

2227 Q. So then what happened? A. The Hospital Association refused to pay because I was not on the staff, and I continued to take care of these patients because I felt the patients had a right to the free choice of physicians, and that was according to our ethics, that every patient should have the right of a free choice of physicians, and so I spoke to the patients, that that was our ethics and that that was the right thing, and that I had a right to take care of them, and that they had a right to go to any doctor they wanted to go to, and then finally they took up the matter with the Industrial Hospital Association and told them that they had to put me on the staff or they would not sign a contract. There were several companies that made that statement, so, consequently, Industrial wanted me on the staff and I refused to be on the staff.

I said, "You have a staff and you are trying to run the thing or run things your own way," and I said, "The only way I could be on your staff would be to allow every recognized physician of the county to be on your staff, and

then only would I be on the staff because that would allow a patient a free choice of physicians."

They finally agreed to that, so every member of the Clatsop County Medical Society became a member of the staff, and then took their ticket, also.

Q. By the way,—maybe you have answered this question, but were you subjected to specific coercion, compulsion, or harassment, threats or pressure by any of the defendants in this case or any medical society, so as to make it impossible for you to practice medicine the way you wanted to? A. Not that I can remember.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, on direct you have evidenced a pretty good memory. I trust it will be as good on cross examination.

I would like to get some dates as to all this. First, I would like the time you had this trouble with Industrial. What time was that? A. That was beginning in 1930, and it must have run two or three years.

Q. Two or three years? A. Yes.

Q. Up to about 1934, or so? Is that right? A. Something like that.

Q. Now, Doctor, you mentioned hospital associations. I would like to get cleared up just what hospital associations you had in mind. A. Well, the first one that I came in contact with that I mentioned was the Industrial Hospital Association, and then the National Hospital Association came into the field in about 1938 or 1939, and the Multnomah Hospital Association came into the field, and OPS came in about 1941.

Q. Those are the hospital associations you have in mind? A. That I dealt with.

Q. In discussing this on direct— A. That I dealt with.

Q. —you said you decided around 1943 to give up dealing with these associations, because you did not want to practice on paper rather than practice on patients.

You are different from a number of doctors who have been willing to associate themselves with these associations, isn't that true, in that respect? A. I don't know what you mean.

Q. I assume you were not the only doctor that had to file or fill out reports and make telephone calls and the like?

Or do you assume you were the only doctor? A. I had plenty of it myself and I know that they bothered us for plenty of reports, and I know other doctors were also, and I wasn't going to take it very long; just did not have the time for it.

Q. You do not answer my question. My question was whether you consider yourself different from the doctors who continued to deal with these hospital associations, assuming that they had similar paper work? A.
2230 Well, I think that the medical profession as a whole desires to practice medicine and not bother too much with paper work.

Q. In other words, you do not particularly care for prepaid medical care organizations anyway, because I assume, in its essence, any prepaid medical care plan must require a considerable amount of paper work. Don't you have that assumption? A. I found that the Oregon Physicians' Service doesn't require anything near that amount of paper work that Industrial or National do, and for that reason we continued the Oregon Physicians' Service reports.

Q. You have to make reports to OPS? A. We make reports, yes, but they are very—

Q. Do you have a girl in your office that does those things? A. Yes.

Q. I don't think you were asked whether you ever held any office in the State Society. Could you tell us about that? A. Well, I have been a member of the House of Delegates; that is all.

Q. And during what period? A. Well, it was in 1948, and then one other time—I don't remember the date, back some ten years.

Q. About ten years ago? A. Yes.

Q. How about being a member of the Council?
2231 Were you ever a member of the State Council? A. No.

Q. What offices have you held with your local society? A. Well, I have been president of the local society twice.

Q. Could you give us the approximate dates? A. Or three times. Somewhere around 1938 and probably 1944 and at the present time, 1950; and I have been secretary several times.

Q. What? A. I have been secretary of the society several times and been on committees.

Q. You have been on committees? A. Yes.

Q. Have you ever been on any of the committees of the Council? A. No.

Q. I mean of the State Council? A. No.

Q. Does your society have a Council? A. No.

Q. As a matter of fact, isn't this what happened: First, your society, with the collaboration of the State Society, reviewed the policy of the State Society with respect to prepaid medical care for low-income groups? A. The Society never took that matter into its hands at all.

Q. Well, Doctor, I call your attention to Exhibit 909, the Minutes of the Special Meeting of the Clatsop
2232 County Medical Society, August 19, 1938, at which we think you were present.

"A motion was made by Dr. So-and-So, seconded by Dr. So-and-So that the recommendation of the Council of the Oregon State Medical Society to the component societies regarding medical care of low-wage industrial groups be voted at this time by secret ballot. Motion carried."

Does that refresh your recollection as to whether the State Society ever brought to your attention a policy with respect to prepaid medical care and whether your society ever took any action with respect thereto? A. I don't remember any action taken by the County Medical Society on that.

Q. You just don't remember? A. It was not taken, I am sure.

Q. What do you think I just read from? A. That said it was to be a secret ballot. It does not say that it was carried out.

Q. "The motion carried." A. But that it was to be done.

Q. I don't think anything can be clearer, can it, Doctor? I don't think anything can be clearer, can it, than the recital where it says, "Motion carried"? A. It doesn't say that it was carried out.

2233 Q. We had a little argument the other day while you were not here about semantics. I assume we are engaged in a controversy about semantics, when we talk about such things, isn't that so? A. (No response.)

Q. Is that your recollection as to what happened? Your society decided that it did not like the idea of having individual coverage contracts down there, isn't that so? A. They have never acted upon it that I know of at any medical society meeting. They have left that up to the individuals to act according to their own desires, and we have always done it that way.

Q. I have here Exhibit 910, which is a letter from the Secretary of the Clatsop County Medical Society. It is

dated March 17, 1939, and it is to the Industrial Hospital Association:

"As Secretary of Clatsop County Medical Society I have been asked to report to you regarding recent action taken by the Clatsop County Medical Society. At a recent meeting of the Society it was voted that the members of the Clatsop County Medical Society refuse to accept for treatment any individual under an individual contract with any hospital association except for a temporary period when an individual previously covered by a hospital association contract is unemployed."

Is that news to you, Doctor? A. Yes, it is.

2234 Q. What position did you have with the Society at that time, in 1939? A. Did I write that letter?

Q. What? A. Was I secretary that year?

Q. I am asking you, Doctor. A. Well, I don't remember.

Mr. Jaureguy: I would ask that the witness be permitted to see the document.

Mr. Marcus: This is cross examination, your Honor, and I am entitled to find out from this witness whether he was secretary and not have to show him the document.

The Court: Go get the document.

(The Bailiff handed the document referred to to the witness.)

Mr. Marcus:

Q. Now, my question is, Doctor, what position did you have with the society at that time? A. I wouldn't remember exactly.

Q. Your memory is not quite as good on cross examination as it was on direct; isn't that so? A. I have been secretary about three or four times, a year at a time, and I don't remember the exact years. Twenty years is a long period of time.

Q. That is true, Doctor, but I understood you to say that you were also President of the Society. A. Yes. I

2235 have not looked over the minutes. I could have reviewed these things if I had known that that was pertinent to this case.

Q. You reviewed only the things such as Mr. Jaureguy asked you about; is that not so?

Mr. Jaureguy: If he wants to review the minutes, they are in that file there.

The Witness: I have been busy. I left my work today and tried to cross the ice and snow, and I don't like to be interfered with too much in the care of sick folks.

Mr. Marcus:

Q. Doctor, I show you Exhibit 919 and ask you to look near the bottom and see whether that refreshes your recollection as to whether you held a position with your local medical society in 1939? A. Well, it states I was unanimously elected vice-president at that time.

Q. And you have got no reason to think you were not? A. Certainly not.

Q. Does that refresh your recollection? A. Yes.

Q. Your society was concerned over the competition of these hospital associations in that area, wasn't it? A. The society, as a society, was never concerned about the hospital associations. We were as individuals.

2236 Q. The society was not concerned? A. No.

Q. Doctor, I call your attention to Exhibit 919, which is the minutes of the Clatsop County Medical Society for December 9, 1939, in which it is stated:

"Dr. Spalding discussed the new contracts being issued by hospital associations excluding medicine and drugs, with particular reference to the contract for the Pillsbury Flour Company. He stated that the committee disapproved of price-cutting by any hospital association in an attempt by competition to obtain contracts."

Do you still say, Doctor, that the Society was not concerned and never took any action with respect to competition by the hospital associations but that it was all a matter of the individual doctors? A. Well, we certainly talked about these problems, but we passed no resolution that would involve any position contrary to our ethics.

Q. "Involve any position contrary to our ethics." Those are medical ethics, aren't they? A. That is right.

Q. Doctor, you had something to do with drawing up the constitution of the Clatsop County Medical Society, did you not? A. I probably did.

2237 Q. Do you recall when that was done? A. I couldn't give you the date, no.

Q. Doctor, you recall the action by the Medical Society to compel the hospital associations operating in your area to agree to certain fees? A. I don't recall the meeting of the Medical Society as such. I recall some of the doctors

getting together with the Industrial and the National Hospital men and talking fees with them.

Q. And that was all done seriatim? Everybody came in separately and discussed it with the hospital associations? A. No. we had a social, group, and we would get together and thresh things over. We felt free to do so.

Q. Now, Doctor, it is true, is it not, that thereafter it was decided by the Society that its members should not deal with commercial hospital associations? A. It was never decided that members of the Society should not deal with hospital associations.

Q. By "deal" I mean accepting their tickets. A. They could do as they wished as individuals, and many of them did accept tickets. Most of them did not.

Q. The Society never took any action to have its members not accept hospital association tickets; is that right? A. The Society never requested any doctor to accept or reject tickets. We talked about the right things to do.

Q. You did. You did that at these Medical Society meetings; is that right? It was at these Medical Society
2238 meetings that you had those conversations; isn't that so? A. It was not at the Medical Society meetings. It was at our own personal confabs with the doctors any place we happened to be.

Q. Now, Doctor, did the Society to which you belong tell the hospital associations that they were not to have family coverage contracts in that area? A. I didn't have anything to do with telling the hospital associations anything of the kind.

Q. I am asking whether the Society did. On direct examination you had no hesitancy in saying what the Society did and did not do. A. The Society, as far as I can recall, did not tell any members to reject family coverage or tell the hospital associations.

Q. They did not tell the hospital associations not to have family coverage in that area? Is that your position? A. That is my position—my position is that we had nothing to do with that.

Q. That is right; you had nothing to do with it. Now, I will read from Exhibit 923, Minutes of Special Meeting of the Clatsop County Medical Society, February 23, 1940:

"The meeting was called to order at 7:50 P.M. by Vice-President Dr. Kullberg. Dr. Chester Moore and Mr. Kirk
of the Industrial Hospital Association presented to
2239 the Society their proposed family coverage plan which they said had been forced upon their organi-

zation by competition from other hospital associations. They stated that any such plan would not be put into effect in Clatsop County without the approval of the local Medical Society.

"President F. E. Boyden and various other members of the Society expressed to Dr. Moore and Mr. Kirk the opinion that the Clatsop County Medical Society definitely opposed such plans, whether that of the Industrial or any other hospital association."

Do you still say, Doctor, that the Medical Society never discussed this problem and never took it up with the hospital associations, but it was merely a matter of the individual doctors— A. It was up to the individual doctors, the individual doctor to decide what he thought was right to do. The Medical Society certainly had a right to discuss their problems. We are not absolutely forced to hold ourselves under control. We are living in a free country. We can talk.

Q. I assume that is so, and I assume that you did plenty of talking in those Society meetings. That is true, too, isn't it? A. We discussed our problems, yes. That is what the Society is for.

Q. What I just read to you, Doctor, was a statement as to the position of the County Medical Society; is that
2240 not so? A. On what?

Q. On family coverage at that time? A. The Medical Society, as far as I know, has never made itself known in any way to enforce any rule with regard to family coverage on hospital associations or upon any individual doctor. It never has enforced any rule or any regulation or any resolution.

Q. In fact, they have never done anything about any of these subjects; is that right? A. That is about what it amounts to. We have talked about it and discussed it.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all, Doctor.

(Witness excused.)

The Court: Mr. Jaureguy, it strikes me, is getting toward the end of his case. I am wondering, Mr. Marcus, what your wishes were going to be about argument, whether you will be prepared to argue the case upon the conclusion of the testimony, or do you want to do something else?

Mr. Marcus: Your Honor, I would like to suggest this procedure, if it meets with your approval: Prior to the conclusion of the defendants' case, or within a day or so, I would like to have a statement from the defendants' counsel with respect to the documents, and then within a
2241 day or so we will file our statement of our objections.

Then I would like to have about two days recess, and then not more than two days for rebuttal. Then, rather than to have argument at that time, I would much prefer, and I may say it is the common practice in the anti-trust cases that I have been involved in, to first file briefs and then, if the Court wants to, have argument.

Now I don't know whether at this time to suggest a time-table as to briefs or not. If your Honor would like me to, I would.

The Court: I suppose it would take quite a while to brief it fully.

Mr. Marcus: I think so, your Honor. I was going to suggest that we might exchange briefs within sixty days, and then within fifteen days exchange reply briefs. Or, if your Honor thought we should file a brief first, we would do that, and then the defendants would have time.

The Court: I am merely asking for your preference. Do you have anything to say, Mr. Jaureguy?

Mr. Jaureguy: My personal experience has convinced me it is not the best practice to try to exchange briefs by a certain date. I think that plaintiff ought to file a brief and then the defendants have a certain length of time to answer it.

The Court: You have no objection to the procedure Mr. Marcus says is the usual practice in the Anti-Trust
2242 Division of the case being briefed before argument?

Mr. Jaureguy: No, I have no preference either way. The only thing I have in mind is what the Court thinks. I don't want to make an argument just for the pleasure of making it unless your Honor thinks it might help you.

The Court: I would not want to be deprived of argument in this case, nor would I want to deprive the public of argument.

Mr. Jaureguy: I wouldn't either, but I am leaving that to your Honor, you see. The last case I was in here, which was during our recess here, the Judge had the opposite opinion. We kind of had to argue with him. He wanted us to argue and then file a brief much later.

The Court: I will state to you now we will follow the usual practice that Mr. Marcus and his colleagues are accustomed to. At the end of all the testimony we will have the case briefed.

Mr. Marcus, I learned when I was East a few years ago that the practice in effect about briefing is a little different than ours. They do exchange briefs back there. I ran into that. So I was not unfamiliar with that when you made the suggestion. But out here the plaintiff's brief is filed and then the defendant's, and then the plaintiff replies, and that is what we will do in this case.

I will want oral arguments, I assure you, exten-
2243 sive argument, after the briefing is completed, at a time satisfactory to both counsel. So now go ahead and get through with your case as soon as you can, Mr. Jaureguy.

Mr. Jaureguy: May I ask a question on that?

The Court: Yes.

Mr. Jaureguy: As I understand it, your Honor's ruling about not calling more witnesses only applies to Clatsop County?

The Court: Yes, for the present.

Mr. Jaureguy: I don't want to call somebody up from a distance and then have to tell him not to testify.

The Court: No, but I am going to begin counting the counties now. I am going to ask him in every case: Is this the last man from this county?

Mr. Jaureguy: You will ask me?

The Court: I will. That is what I expect to do. As I said to you today, Dr. Straumfjord will be the last man from Clatsop County.

Mr. Jaureguy: You told me, yes.

The Court: And I am going to tell you the same thing about every county from now on. But I don't want any man whose name has been mentioned in the Government's case, any doctor who wants to be heard, to be deprived of that opportunity.

Mr. Jaureguy: I want to ask a question there. Of course, in the More Definite Statement they listed about 200 of them.

The Court: I have it right here.

2244 Mr. Jaureguy: And I am assuming that is not included in any—

The Court: I don't say you have to call all of them.

Mr. Jaureguy: No, I understand. But I understand when you say they have been mentioned, later on they modified it, and I have interpreted your Honor's statement to mean those that there has been some testimony on or exhibits on.

The Court: That is right.

Mr. Jaureguy: Where there has been testimony and he has been mentioned in the trial of the case.

The Court: Any man who has had his feelings hurt or his professional practices challenged or criticized, if he wants to be heard he may.

Mr. Jaureguy: I want to say for the purpose of the record here that the witnesses that are being called because the attorneys for the defendants feel that it is for the defendants' case. I don't recall of anybody that is being called just because he wants to be called or that his feelings have been hurt.

(Thereupon, at 4:00 o'clock P. M., an adjournment was taken until 10:00 o'clock A. M., the following day, February 3, 1950.)

2245 Court reconvened at 10:00 o'clock A.M., Friday, February 3, 1950, pursuant to adjournment.

Mr. Marcus: Yesterday, during the recess, Mr. Jaureguy was kind enough to show me the statement that Dr. Chuinard was prepared to make in respect to Dr. Klingler. Upon looking at that statement, not only do I consider it not derogatory, but I thought it would support our case. I have been in touch with Dr. Klingler and told him about this statement and I have his permission to have it put in the record. During the recess I would like to have it considered in the record.

Mr. Jaureguy: I don't know how to insert something. What I gave him were the notes that I have taken, and I can state for the record now what the doctor would testify to.

The Court: We will have Dr. Chuinard come back and resume his examination.

Mr. Jaureguy: Shall I call the next witness?

The Court: Yes.

Mr. Jaureguy: Dr. Pitman.

DR. ARCHIE O. PITMAN was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

2246 Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please. A. Dr. Archie O. Pitman.

Q. You live where? A. Hillsboro.

Q. You have been there how long? A. About twenty years.

Q. What is your business or profession? A. Physician and surgeon.

Q. You have been a physician and surgeon since when? A. Since 1928 or 1929.

Q. Have you practiced all the time in Hillsboro? A. With the exception of one year in Forest Grove.

Q. Would you tell us what medical school you attended? A. University of Oregon.

Q. Then did you have any training or internship after that? A. At Multnomah County Hospital.

Q. Are you a member of any medical society? A. Yes, Washington County Medical Society.

Q. Any others? A. Oregon State.

Q. Oregon State? A. And AMA.

Q. American Medical Association? A. Yes.

2247 Q. How long have you been a member of those societies?

The Court: If you were looking for Dr. Brennan, I can see him through the door. I don't know whether his arrival is expected or not.

A. Since I started in practice.

Mr. Jaureguy:

Q. Has that membership been continuous? A. Continuous, yes.

Q. Have you been an officer at any time of any of those societies? A. I have been President of the County Society and am now on the Council of the State Society.

Q. How long have been on the Council of the State Society? A. This is my second year.

Q. Have you ever been a delegate to the House of Delegates of the State Society? A. Yes, I was a delegate to the State Society about three years preceding going on the Council.

Q. During the time you have been practicing medicine have you had occasion to treat patients who were members of any commercial hospital association? A. Yes, I have.

Mr. Marcus: I would like to make the same objection with respect to this witness testifying as to his experiences with these associations as made with respect to Dr.
2248 Durno.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. I think you had already answered Yes. A. Yes.

Q. During how long a period have you taken care of patients you knew to be members of those commercial hospital associations? A. Ever since I have been in practice.

Q. During that period of time have you uniformly taken tickets and billed the associations or have you uniformly refrained from doing that, or has it been a little of both? A. No, there was a period of time from early 1942 until the latter part of 1948 that I rejected the tickets.

Q. Has that rejection of tickets been on account of some action of the Medical Society or on account of your own experience, or for other reasons? A. It was on account of my own experience.

Q. I wish you would tell us the experiences you had which led you to the conclusion you would not take tickets? A. Over a period of years—in the early years of my practice I found the practice of the so-called lay hospital associations was very objectionable. They interposed themselves between the patient and his physician.

Q. What do you mean by that? A. They took contracts to furnish medical care to industrial groups in our area and then would allow the local physician to do first-
2249 aid work and that is about all. Of course, that was a very objectionable thing. There was nothing which we could do about it at the time, and that went on for a period of years.

Q. I would like to have you explain a little about that. When they went down and took contracts, did they consult the doctors first? A. No.

Q. Then you say they permitted you to do first-aid work, and that is all? What happened to the patient after the first-aid work was done? A. The patient was supposed to be sent on into Portland then to the group in here, the contracting group, which was supposed to render the more major services.

Q. Were your objections to that purely from a selfish standpoint of doctors generally, or did you think that was not for the best interests of the patient or the public? A. It was very often not for the best interests of the patient. They needed to travel a greater distance, of course, to obtain medical care which could be obtained in the community. It resulted in inconvenience to the patient and delay of the treatment. It also, of course, retarded the development of facilities in the community for treating patients. It retarded the hospital development.

Q. Would you say in the usual case that transfer
2250 to Portland was the wish of the patient? A. No, very often it was not, but they understood that was the contract and they had to abide by it.

Q. Was that done in cases where the doctor opposed it? I mean, was that done at the wish of the doctor or otherwise? A. Oh, no. It was very often against the wish of the doctor, of course. He did not appreciate relinquishing the case.

Q. Did you feel competent and qualified to take care of those cases yourself? A. I did.

Q. You say they interjected themselves between the doctor and patient. Did you feel free in cases where you knew the patient was covered by one of these contracts to proceed in the usual manner in which you thought it was best for the patient? A. I did, and I very often did proceed and took care of the patient. I thought it was my right to do so, that they had no right to tell me whether I could or could not take care of a certain patient.

Q. Did they endeavor to control that? A. Yes. They would often object to my doing so and would write letters to me telling me I should not take care of patients I had no authorization to take care of. However, I did so anyway, until, of course, there was a dispute about the bill. I felt that they were acting as an insurance company and that I would look to them for collection of the bill.

2251 Q. Here is a letter that was written by Mr. Page of the National Hospital Association to you on March 28, 1936, being Defendants' Exhibit 1873, in which he says:

"We note you have made a charge for a fluoroscopic examination of the stomach on February 2. We do not find a record of this case having been reported to us and authority obtained for this examination. Will you please advise?"